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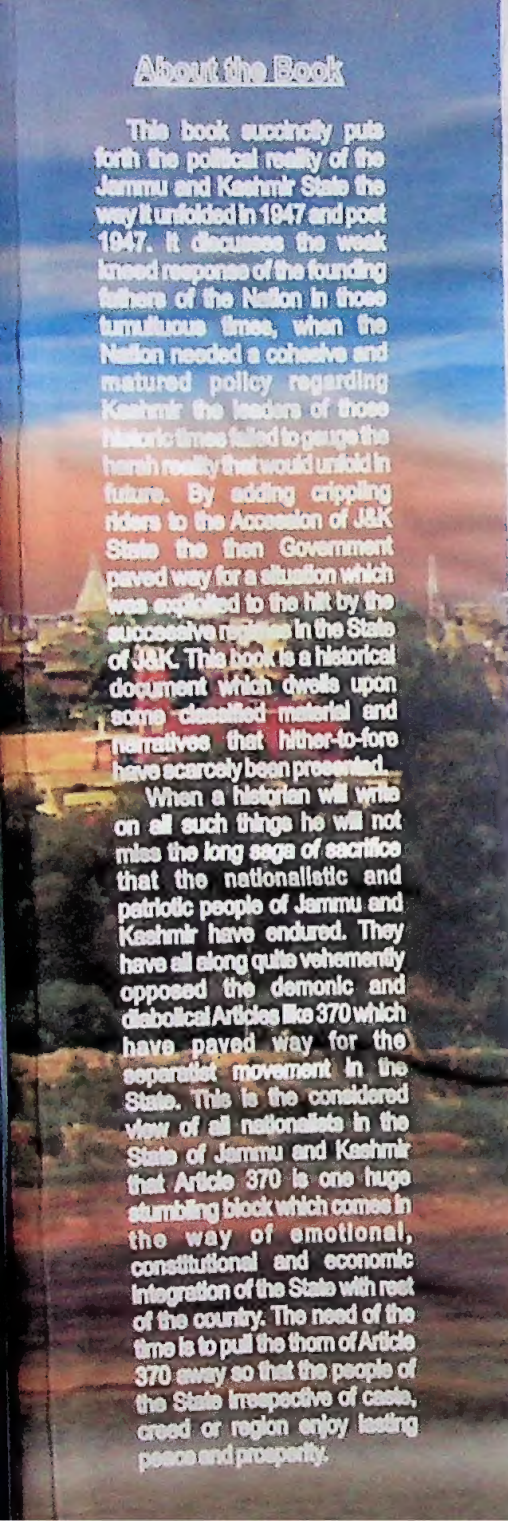
A THORN

IN STATE'S INTEGRATION WITH REST OF INDIA

Prof. Chaman Lal Gupta



## About the Book



This book succinctly puts forth the political reality of the Jammu and Kashmir State the way it unfolded in 1947 and post 1947. It discusses the weak lined response of the founding fathers of the Nation in those tumultuous times, when the Nation needed a cohesive and matured policy regarding Kashmir the leaders of those historic times failed to gauge the harsh reality that would unfold in future. By adding crippling riders to the Accession of J&K State the then Government paved way for a situation which was exploited to the hilt by the successive regimes in the State of J&K. This book is a historical document which dwells upon some detailed material and narratives that hitherto have scarcely been presented.

When a historian will write on all such things he will not miss the long saga of sacrifice that the nationalistic and patriotic people of Jammu and Kashmir have endured. They have all along quite vehemently opposed the demonic and diabolical Articles like 370 which have paved way for the separatist movement in the State. This is the considered view of all nationalists in the State of Jammu and Kashmir that Article 370 is one huge stumbling block which comes in the way of emotional, constitutional and economic integration of the State with rest of the country. The need of the time is to pull the thorn of Article 370 away so that the people of the State irrespective of caste, creed or region enjoy lasting peace and prosperity.







# ARTICLE 370 - A THORN

## IN STATE'S INTEGRATION WITH REST OF INDIA

*Prof. Chaman Lal Gupta*

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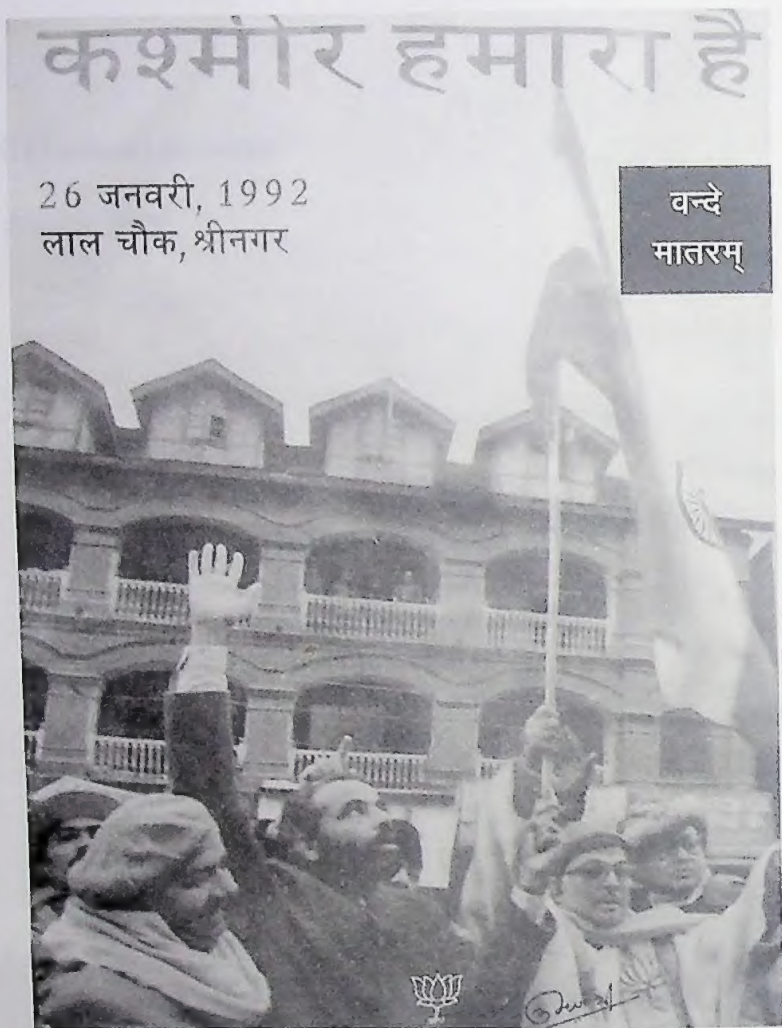
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*The book is dedicated to  
my family, friends  
& all those nationalists  
who have suffered  
for the cause of the  
Nation*





***The Author (1st from left) along with the national leaders of BJP Sh. Narendra Modi and Sh. Murli Monohar Joshi in Lal Chowk, Srinagar (Kashmir) during Ekta Yatra in 1992***

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*Eminent nationalist leader  
Pandit Prem Nath Dogra*



*The Author (Ist from left) during Doda Bacchao Andolan  
with Senior Leader of BJP Sh. L.K. Adwani in 1994*



## Author's Note

The great ancient tradition of politics has been given a silent burial in the post independent India. If we deeply read the purpose of politics as propounded by Mahatma Vidur in his celebrated Vidur Neeti we will come to understand the real nature and purpose of politics. In all probability good politics is to provide people a just government with a vision for future and at the same time preserve and perpetuate the cultural and moral continuity based on time tested assumptions and values. In addition to it, the strengthening of country's defence against any possible attack from outside is too a responsibility of the people who operate and control the levers of power.

There were compulsive reason for me to undertake this venture though I do not claim to be endowed with scholarship of high merit but one thing that kept me focussed on writing this book was the fact that since formative years of this State I have in one way or the other been associated with various developments to which I was witness to that have shaped the destiny of this unique State of the Union of India.

Soon after Independence every effort in the realm of possibility was put in to ensure that the State of Jammu and Kashmir not only gets a special Status but also gets marginalised from the national mainstream. The sum total effect of the puerile response shown by the leaders of the time in particular in handling the affairs of this State has now resulted in a messy situation. Our nation is now locked in mortifying battle with the separatists and fundamentalists who at the behest of Pakistan have unleashed a proxy war on the country. We all know that the proxy war is not the new one that has been thrust upon us but prior to it four wars have been thrust on India by Pakistan in 1947, 1965, 1971 and in 1999 - Kargil war. All along the course of post Independence such forces were nurtured who had devious loyalties. Instead of strengthening the national and truly secular tradition such parties and personalities were patronised who in one way or the other undermined or strived to undermine the writ of the constitution over

the State.

Things like a autonomy, Self rule, double currency, new surrender policy for POK terrorists, open borders and above all Article-370 are nothing but different garbs through which the presence of India is sought to be diluted in the State.

Today we stand at the cross roads of history. The valley of Kashmir is desolate and bleak. Inimical forces have executed a near complete ethnic cleansing of Kashmiri Hindus (Pandits) who are the true aboriginies of Kashmir. They at present languish in exile. They have been thrown out of their cherished home where they nurtured a great civilisation for more than 5000 years. Rudderless they are now at the verge of extinction. This is one of the saddest stories of Independent India. But given the sinister vote bank politics their just and genuine expectation's are not heeded instead they are repeatedly ignored. Similarly refugees of 1947, displaced people of 1965, 1971 and large number of people of Jammu Division who had to leave their homes because of threat of terror are crying for attention and succor which has been denied to them till date. The refugees of 1947 have been totally neglected. They are neither provided jobs nor voting rights. In a democratic set up of which we all are so much proud of this is not only unjust but unthinkable. Under the convenient cloak of Article-370 these people who number in lakhs are denied the fruits of democracy.

In Jammu province which is more in area and also has more population than the valley is reeling under the valley jackboot. The domination of the Kashmiri politicians has made Jammu division suffer in every concealable situation. The issue of delimitation is one large issue that needs to be addressed very soon. Shri Amarnath Land Row or the row over central university and Justice Sager Report, are grim reminders of the pathetic state of affairs. The representation of Jammu in J&K secretariat has considerably dwindled. There is very less development in Jammu comparable to the valley. The hilly areas of Jammu are yet without connectivity, electricity or schools.

Jammu division since independence has suffered for the motherland. When a historian will write on all such things he will not miss the long saga of sacrifice that the nationalistic and patriotic

people of Jammu & Kashmir have endured. They have all along quite vehemently opposed the demonic and dibolical Articles like 370 which has paved way for the separatist movement in the State. The agitation for redemption of honour of Tricolour from my student days, followed by student's agitation, then the Praja Parishad movement, Doda Bacchao Andolan and Ekta Yatra in which I too along with my friends played a role are significant events that need to be recorded.

I remember that struggle for the respect of Tricolour when as students we sat for the fast unto death. In those days I was studying in class 11th. Everyday some new participants would come and sit on the fast. It was a fast and the participants declared not to drink even water. During these days the marriage of my uncle was being solemnised so I decided to sit on the fast after the marriage ended. But circumstances dictated that I had to sit on the fast prior to it being solemnised. Two of my close friends Sh. Ram Swroop Gupta and Sh. Hardev Sharma also joined the fast on my bidding. Hence I could not attend the marriage of my uncle. I hereby must mention about supreme dedication and devotion to national cause of those of my friends who at my slightest proposal to join the struggle of fast unto death wasted no time and readily agreed to my proposal and by the skin of their teeth escaped death. The day I sat for the fast unto death my father came and sat with me. When in the evening he was about to leave tears welled up in his eyes. My eyes too turned moist. But my father before leaving the spot told me that you have taken a decision and now you should not back out, sit here till our honour is redeemed. These words of my father were not only reassuring but highly inspiring.

I still after the passage of about sixty eight years vividly remember those piecing eyes of my father which though moist were full of patriotism and confidence. I have always been inspired by that brave gesture of my father whose son had sat for a fast unto death and nobody knew whether his son would come home alive or not. Such was the spirit of struggle in those days. People were ready to sacrifice every thing for the cause of the nation. I sat continuously for thirty four days, when government finally gave in and accepted our demands. The cases against the students were



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withdrawn. This incident was a moral and psychological victory for the nationalists of the State and led to foundation for similar such struggles which continue till day.

My heart was deeply stirred to pendown such historical events which have resisted the attempts to disintegrate the State. We must not forget the contributions of Dogra kings who are the founders of modern State of Jammu and Kashmir. Credit should be given to these Dogra kings who were more secular, considerate and just than our present rulers who are driven by narrow and parochial concerns. This book is about the long saga of sacrifice of all those nationalistic people who otherwise in the 'peculiar secular dispensation' would find no mention.

This is the considered view of all nationalists in the State of Jammu and Kashmir that Article-370 is one huge stumbling block which comes in the way of emotional, constitutional and economic integration of the State with rest of the country. The need of the time is to pull the thorn of Article 370 away so that the people of the State irrespective of caste, creed or region enjoy lasting peace and prosperity. Utmost care has been taken to ensure that this book is brought out without mistakes, inspite of this it is possible that some errors might have crept in. I would welcome any suggestion for further improvement of this book.

My thanks are due to the Former Governor of Jammu and Kashmir, Union Minister Shri Jagmohan Jee, former Union Minister and now leader of opposition Rajya Sabha Shri Arun Jaitley Jee and Shri Gopal Sachar, Journalist for allowing me to incorporate their valuable ideas in this book, Shri R.K. Thakur, Joint Director, Lok Sabha Secretariat who helped me a lot in providing old records of the Parliament debates on Kashmir. I must thank Shri Pardeep Kaul, Dr. Maharaj Krishan Bharat for their valuable suggestions and Shri Tarun Kumar who composed this material. They worked day and night to complete this work. I am also indebted to my family to provide financial help and atmosphere congenial for the completion of this book. Lastly my regards are due to Late Shri Radha Krishan Sharma who initiated this idea of writing a book on this important subject.

**Prof. Chaman Lal Gupta**

## 1. INTRODUCTION

In October 26, 1947, Maharaja Hari Singh after Pakistani attack on Jammu and Kashmir executed an instrument of accession byway of which he surrendered the jurisdiction of three subjects- Defence, Foreign Affairs and Communication to the Union Government. Though the format of this instrument of accession was exactly the same as was executed by other heads of the Princely State. All other princely states merged with the Indian union and adopted the constitution of India but Jammu and Kashmir had its own constituent assembly and hence a separate constitution which was adopted on 17<sup>th</sup> Nov 1956. But for the intervening period i.e. from the time of execution of the instrument of accession to its consideration by the constituent assembly of the state, temporary provisions had to be made in the constitution of India and this was done by incorporating Article 370.

The sum and substance of Article 370 is that with regard to Jammu and Kashmir in addition to Defence, Foreign Affairs and Communication the Union Parliament can make laws with regard to the items in the Union and concurrent lists but only with concurrence of the State Government. This puts the Jammu and Kashmir State on a special footing while the union Parliament has unfettered powers to make laws for all the States in respect of items included in the Union and concurrent lists of the constitution. It can do so with regard to Jammu and Kashmir only with consent of the State Government.

Not long after the special provisions for the State were incorporated to the constitution of India, many lacunae and short comings which the special provisions were fraught with, came to surface. To rectify these short coming Delhi Agreement of 1952 was executed. But the Presidential order came on 14<sup>th</sup> May 1954. Extending financial integration of the State and other provisions of Indian Constitution to the State of Jammu and Kashmir.

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This order was amended from time to time extending more provisions of the Indian Constitution to the State.

The Constituent Assembly of the State completed the task of framing the Constitution in October, 1956. On 17<sup>th</sup> November the same year it was adopted by the Constituent Assembly. The Constitution of the State declared the State as an integral part of the Union of India. The executive powers were vested with the Sadar-i-Riyasat, whose office was elective with a term of five years. The Sadar-i-Riyasat was to be aided and advised by a Council of Ministers, jointly responsible to a Legislature, elected on the basis of the universal adult franchise. The State Constitution made provisions for a High Court of Judicature in the State and incorporated a long list of the Directive Principles of the State Policy.

In May 1957, the integration of the State services with the Central Service cadres, came up for discussion between the representatives of the Kashmir Government and the Government of the State. In pursuance of the agreement the Parliament enacted measures to extend the operation of the Indian Administrative Service and the Indian Police Service to the State, ensuring the participation of the State in the All Indian Services.

In 1960 the Supreme Court was given the powers to give special leave to appeal from the decision of the High Court of Jammu and Kashmir. The elections to either House or resolutions of doubts and disputes relating to them were placed under the supervision of the election commission of India although they continued to be conducted according to the laws of the State Legislature.

In 1964, the provisions of the Constitutions of India pertaining to emergencies arising out of Constitutional breakdowns were extended to Jammu and Kashmir State. Before the amendment, the powers to proclaim a state of emergency due to constitutional break-down and to assume the powers of the Government in the State, were vested in the Sadar-i-Riyasat of the State. Provisions of the Constitution of India with regard to the elections, jurisdiction on the concurrent subjects and trade, commerce and intercourse were also ordered to be applicable to



the State, with certain modifications and reservations. Certain other subjects, included in the Union List, but placed within the powers reserved for the State, were also delegated to the Union in due course of time.

In 1966, the Constitution of the State was amended. The powers to appoint the Governor were vested with the President and the procedure under which the State Legislature was empowered to elect the *Sadar-i-Riyasat* was abolished. The President was empowered to appoint the governor by warrant under his seal and signature. The office of the Prime Minister was also abolished by the Amendment Act, and provisions were made under which the Council of Ministers in the State was headed by a Chief Minister.

“The State has been bled white by the vested interests of a few families who had acquired a stranglehold on the social, economic and political framework of the State. These interests controlled the politics, dominated the administration, the High Court, the Judiciary, the Bar, the business and the industry. The vested interests of the small coterie of the ruling elite had been the biggest obstacle in bringing the State to the mainstream and to weld it with the Union-administratively, constitutionally and legally.

As long as Kashmir stands aloof and Central laws are not extended to the State, the isolationist, parochial and separatist forces would remain strong and the vicious circle of vested interests and pro-autonomy trends would never be broken.

Even after four wars with Pakistan, every time Pakistan was humbled and even after Taskkent and Simla agreements Pakistan is still meddling in Jammu and Kashmir, this is because of the confused policies of the State and the Centre. When Jammu and Kashmir is an irrevocable part of India. Legally and Constitutional accession of Jammu and Kashmir is complete, why this State is not treated like any other State of India. Some leaders still talk of the resolution of Kashmir problem. The problem is POK, with Pakistan it must be settled.

Our security forces with their blood, sacrifices and the co-

operation of the people have curtailed the militancy to some extent. Immediately voices of curtailment of security forces have started. The impression is that Government is buckling under the pressure of separatists and some foreign powers. In internal and external pressure in lowering the guards in Jammu and Kashmir is nothing but endangering what has been achieved through great sacrifices of the forces and sufferings of the countrymen. Infiltration bids along the borders and line of control have marked alarming increase in the recent days and there has been a spurt in the activities of the terrorists and fundamentalists coupled with controversial slogans of autonomy and self rule as also the ill conceived report of working group headed by retired Justice Saghir Ahmad proposing reversal of the integrations. Appeasement of antinational elements is resulting in more problems and encouragement to secessionists.

Vision demands that in Jammu and Kashmir, the vicious circle of the separatists' forces and traditional ruling elites who are misusing the power, be broken and common man made to realise the truth that the Central Government and the general masses of the country always mean good and pray for their welfare.

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## 2. INTERSTING QUOTES ON KASHMIR

*Here are some of the interesting quotes on Kashmir in those turbulent times which reveals the mindset of different personalities working at those times. These quotes, the reader will find of immense historical value.*

### \*Sheikh Abdullah in Constituent Assembly on 5<sup>th</sup> Nov. 1951

We have to consider the alternative of making ourselves an eastern Switzerland, of keeping aloof from both states but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of present dead lock. To us as a tourist country it could also have certain obvious advantages. But in considering independence we must not ignore practical considerations. First, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on long and difficult frontiers bordering so many countries.

Secondly, we must have the goodwill of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression? I would like to remind you that from 15th August to 22 October 1947, our state was independent and the result was that our weakness was exploited by the neighbour with whom we had a valid stand still agreement. The state was invaded what is the guarantee that in future too, we may not be a victim of a similar aggression?

### DIXON IN HIS REPORT TO THE SECURITY COUNCIL

‘The State of Jammu and Kashmir is not really a unit, geographically, demographically or economically. It is an agglomeration of territories brought under the political power of one Maharaja. That is the unity it possesses.

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**\* ON JUNE 17 AND JULY 30, 1947 JINNAH SAID:**

With the lapse of paramountcy, all Indian states would automatically regain their full sovereign and independent status. They are, therefore, free to join either of the two dominions or to remain independent.

**\*LORD ATTLEE – PRIME MINISTER OF UNITED KINGDOM**

It is the hope of His Majesty's Government that all states will, in due course, find their appropriate place within one or the other of the Dominions.... If I were asked what would be the attitude of His Majesty's Government to any state which has decided to cut adrift from its neighbour and assert its independence, I would say to the ruler of that state, "Take your time and think again. I hope that no irrevocable decision will be taken prematurely".

**SIR OVEN DIXON**

Without going into the causes or reasons why it happened, which presumably formed part of the history of the subcontinent, I was prepared to adopt the view that when the frontier of the state Jammu and Kashmir was crossed. I believe on 20th October 1947, by hostile elements, it was contrary to international law and when, it was in May, 1948, as I believe, units of the regular army of Pakistan moved into the territory of the state, that, too, was inconsistent with international law.

**NOVEMBER, 1947 – BAKSHI GHULAM MOHAMMED**

The Pakistani leaders were unwilling to let the Kashmir issue be decided by a referendum. The Pakistani leaders were reported to have said, "that unless Sheikh Abdullah pledged to Pakistan that National Conference would solidly vote for the state's accession to Pakistan, they could not agree to a referendum". That suggestion was totally unacceptable to the leaders of the conference.

**DECEMBER 10, 1947 – G.M. SADIO**

Before the invasion, the National Conference deputed me to approach the Pakistani Government at the highest level to recognize the democratic rights of the Kashmiri people for self-



determination and abide by the sovereign will of free people on the question of free association with either dominions. I met Pakistan's Prime Minister and other Ministers, but it was of no use.

**ON APRIL 2, 1956 NEHRU SAID**

Let us look at it from the practical point of view, because we want good relations with Pakistan, between India and Pakistan. That is very important to us, more important than some strictly legal or constitutional interpretations. But if the law is thrust upon us, then we shall have the law and the law is that the aggressor is guilty and that Kashmir has acceded to and is part of the Union of India.

**G.B. PANT – UNION HOME MINISTER ON JULY 8, 1955 SAID AT SRINAGAR**

“We made certain statements when Kashmir acceded to India, but when we made the statements the circumstances were different from what they are now. The time factor is very important. Many things have happened since then. During these eight years Kashmir has been following a certain policy for its advancement and many development schemes are in progress. Pakistan has entered into a military alliance with America. The Constituent Assembly of Kashmir, which was elected on the basis of adult franchise, has taken a definite decision. Resolutions passed by the Jammu and Kashmir National Conference, on the eve of the elections, to the Constituent Assembly and the inaugural address delivered by Sheikh Abdullah made it abundantly clear that the Constituent Assembly had been constituted primarily for the purpose of determining and deciding this vital issue. In these circumstances the tide cannot be turned now. The Pakistani Government has failed to agree to any reasonable conditions for a plebiscite”.

**SHEIKH ABDULLAH, JUNE 18, 1948**

“We the people of Jammu and Kashmir have thrown our lot with the Indian people not in the heat of passion or a moment of despair, but by deliberate choice. This is self determination”

Russian leader Khrushchov and Bulganin on 14 Dec 1955

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at Delhi said, "As for as Kashmir is concerned we witnessed while in Kashmir with what deep joy the people of Kashmir appreciated its national liberation, considering its territory as an integral part of the republic of India".

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*"Let Sheikh declare that he accepts this sovereignty of the Parliament. There can not be two sovereign Parliaments in India. You talk of Kashmir being a part of India and Sheikh Abdullah talks of a sovereign parliament for Kashmir. It is inconsistent. It is contradictory. This Parliament includes a majority of people who will not be swayed by any small considerations and why should he be afraid of accepting the sovereignty of this parliament of free India?"*

*(Dr. Syama Prasad Mookerjee,  
Lok Sabha debate on 7<sup>th</sup> August 1952)*

### 3. INDEPENDENCE, ACCESSION AND UNIFICATION

On July 5, 1947, the Sates Department was set up to conduct the Government of India's relations with the Indian states or the princely states. The department was in charge of Sardar Vallabhbhai Patel who worked in consultation with Abdul Rab Nishtar, a Muslim League representative.

At the time of Independence, the princely states suddenly found themselves left in the lurch. The Indian Independence Act, which was enacted by British Parliament on July 18, 1947, came into force from the "appointed day", August 15, 1947. Sub-section (b) of paragraph 1 of Section 17 laid down that as from the appointed day "the suzerainty of his Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the Rulers of Indian States..." In other words, the Crown was not to have any relationship with the princely states, all obligations arising from the treaties and agreements signed between the princes and the Crown were to come to an end and His Majesty's paramountcy would cease to exist.

The Viceroy, Lord Louis Mountbatten, who was to later take charge as the first Governor General of Independent India, speaking at a conference of the rulers and representatives of these princely states on July 25, 1947, said, "The Indian Independence Act releases the states from all their obligations to the Crown." He also clarified that after the lapse of paramountcy, they should accede to either of the two dominions. Since geographical contiguity was to be taken into consideration, majority of the states had to opt for India. Lord Mountbatten stressed the urgency of the situation: "If you are prepared to come, you must come before the 15th August."

In view of this, the States Department prepared the Instrument of Accession. There were two types of instruments: First, that which was to be signed by the rulers of the fully empowered



states, numbering 140. Second, that which was to be signed by the rulers of states in respect of which the Crown exercised certain powers and jurisdiction, numbering over 300. Apart from these two, there was third form of instrument of Accession which was to be signed by "intermediate" rulers who were higher in status than the rulers of states where the Crown exercised certain powers and jurisdiction but did not possess "full powers", numbering 70. The accession was supposed to be on three subjects: Defence, foreign affairs and communications. Later, during the integration of the states, the original ambit of the Instrument of Accession ceased to be applicable.

Jammu and Kashmir was the largest princely state and during paramountcy, its total area of 86,023 sq. miles covered Kashmir valley, Jammu province in the south, Ladakh in the east, Baltistan in the north and further north the regions of Hunza and Nagar and to their west, Gilgit Agency. Its ruler at that time was Maharaja Hari Singh. He could not take a decision on signing the instrument of Accession by Aug 15, 1947. He kept on thinking with the three alternatives, : Accede to India, accede to Pakistan or declare independence. His Prime Minister at that time, Ram Chandra Kak, was known to be an advocate of independence. But the Maharaja found independence an unfeasible solution after his meeting with Mountbatten between June 19 and 22, 1947. What Mountbatten told the Maharaja is not recorded but it is believed that he tried his best to persuade him to accede to Pakistan and is quoted as having told him that "the States Department would not take this as an unfriendly act". He further said that it was particularly important to "ascertain the wish of the people" by any means in view of the composition of the population. V P Menon records in the Integration of the Indian States. "The Maharaja was never for Pakistan and so Lord Mountbatten asked for a meeting on the last morning of his visit." The Maharaja avoided the meeting, saying he was in bed with colic.

It is to be noted that Mountbatten did not, in the case of other princely states such as Hyderabad and Junagarh, where the

issue was much more complicated, advise the rulers to ascertain the wish of the people before making up their minds. In fact, in a Press Conference on June 4, 1947, a day after the announcement of the plan for independence, he himself made it clear that the question of consulting the will of the people did not arise. The only conclusion that can be drawn from his insistence on Hari Singh ascertaining the wish of the people of Kashmir is that he wanted the State to accede to Pakistan.

Before the Maharaja could take a decision regarding the accession of the State, his Prime Minister, in a telegram on Aug 12, 1947, expressed the desire of concluding a Standstill Agreement with India and Pakistan. The agreement contained provisions which were temporary in nature to maintain the status quo. The subject matters of the Standstill Agreements which were offered to India and Pakistan were different. While the offer made to Pakistan was limited only to the State's communications (the only road link was through Pakistan), supplies, post and telegraph and nothing else", the telegram which was sent to the Government of India, stated that "Jammu and Kashmir Government would welcome standstill Agreement with the Union of India on all existing matters with outgoing British Indian Government. Thus the offer made to India was extended to many other subjects and even provided for India to use force should the State be attacked by any foreign power in the same way this could be done by the British Government Under the provisions of the Treaty of Amritsar, 1846 (see annexures for details of Amritsar treaty). The Government of Pakistan accepted the offer by an exchange of telegrams on August 16, 1947. The Government of India declined.

The Maharaja had doubts about Nehru whom he viewed as a friend of Sheikh Abdullah. On the other hand, he had great regard for Sardar Patel. But it was Nehru's writ that ran when it came to Jammu and Kashmir. In any event, Sardar Patel chose to wait and watch and prepare for the contingency of sudden accession. His efforts were hampered by poor communications. Telephone and telegraphic lines were being tapped by Pakistan.

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Two developments of importance occurred immediately after Pakistan emerged as an independent country on August 14, 1947, shaping the future course of events.

One, the Muslims of Poonch aided by Pakistan Muslims started a "hoax" agitation against the Kashmir Government. When the Maharaja tried to suppress the agitation, local Muslim leaders, with the help of Pakistani Army personnel, who originally hailed from that region and armed with weapons, overpowered the Maharaja's forces in a pitched battle at Bagh on Aug 25, 1947.

Mohammed Ali Jinnah's Government decided to put economic pressure on Jammu and Kashmir which was dependent on Pakistan for essential supplies as road links lay through that country. The Pakistan Government cut off the supply of essential items like foodgrains, petrol, kerosene, salt and sugar. It was an economic blockade securing these supplies from India would be a Herculean task as the only link was by air.

The Government of Jammu and Kashmir protested against this violation of the Standstill Agreement. A number of telegraphic messages were exchanged between the two governments in September 1947. Instead of redressing the grievances, Jinnah's Government made counter allegations against the Jammu and Kashmir Government, accusing it of repression and massacre of Muslims and also of incursion in its territory of armed bands from Kashmir. The following telegrams would be instructive for a better understanding of Pakistan's gameplan:-

Oct. 12, 1947: From Foreign Secretary of Pakistan to Prime Minister of Kashmir: The Government of Pakistan warns the Kashmir Government that the "continuance of such raids will be regarded as an unfriendly act".

Oct. 15, 1947 : The Government of Jammu and Kashmir offers an impartial investigation. At the same time it warns that if its request is not heeded, the "Government, much against it wishes, will have no option but to ask for assistance to withstand aggressive and unfriendly actions of the Pakistan people along our border".



Oct. 18, 1947: The Prime Minister of Jammu and Kashmir follows this up with another telegram to the Governor-General of Pakistan in which he related in detail the economic blockade and the armed incursions into the State from Pakistani territory.

Oct. 18, 1947 : The Foreign Minister of Pakistan sends his reply, saying, "Large numbers of armed Sikhs as well as Hindus... have gone to Kashmir with the object of repeating the tactics they followed in East Punjab to kill, terrorise and drive out the Muslims. Pakistan Government must take a most serious view of a state of affairs in which Muslims in Kashmir are suppressed and forcibly driven out" .

Oct. 20, 1947: Jinnah sends a telegram to the Maharaja, deploring the tone and tenor of the Prime Minister's telegram and denied the allegations, saying that the difficulties in the supply of essential goods and services were caused by disturbances in East Punjab. He then accused the Maharaja of plotting to join India - "The course which your Government is pursuing is suppressing the Mussalmans in every way, the atrocities which are being committed by your troops and which are driving Muslims out of the state, various indications given in the Press particularly the release to the Press of your Prime Minister's telegram addressed to me containing unfounded allegations and the threat to enlist outside assistance, show clearly the real aim of your Government's policy is to seek an opportunity to join the Indian Union through a coup d'etat securing the intervention as assistance of that Domination."

Oct. 21, 1947 : The Pakistan Foreign Minister sends a telegram to the Jammu and Kashmir Prime Minister saying, "A reign of terror has been let loose in Poonch and terrible atrocities are being committed by Dogra troops in Poonch area. Large number of refugees are crossing from Kashmir territory into Pakistan and they relate stories of human barbarity. Serious anxiety about the safety of their families in Poonch areas is being felt by Pakistan military personnel whom it is exceedingly difficult to reassure in absence of any clear reports or assurances from you."

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Oct. 22, 1947 : The Government of Jammu and Kashmir denies the allegations and insists that people from across the border are causing trouble in Muzaffarabad district of Kashmir. The telegram repeats a message from Poonch saying. "Hindus and Sikhs in danger of being completely wiped out. Rebels 15 miles from city" .

Oct. 22, 1947 : Infiltrations and raids from across the border are transformed into a full scale invasion from the North-Western Frontier Province of Pakistan. The raiders who come from two directions in motor vehicles succeed in occupying considerable parts of Jammu province and press for Srinagar. The aggression, for which Pakistan has been clearly looking for an excuse, starts in full earnest.

Oct. 24, 1947: Maharaja Hari Singh sends an urgent message to the Government of India, seeking military assistance against the Pakistani invaders. This is accompanied by an appeal from his Prime Minister, Meher Chand Mahajan. Mountbatten is against providing such assistance, irrespective of the circumstances. Nehru concurs, arguing that these were the days of the UN - he was obsessed with the UN - when for a state to take up arms even for a just cause needed sanction of jurisprudence. On the other hand, V Shankar records in his 'My Reminiscences of Sardar Patel': "Sardar was quite firm and prepared to jump into the fray. Notions of chivalry, India's interests and his own conviction that Kashmir should be with Indian all prompted him to accept the Maharaja's appeal and rush to his aid promptly but the niceties of diplomatic deliberations between the Governor-General, the Prime Minister and himself had to be gone into. I would however, like to maintain that it was Mountbatten's ideas that India should first acquire the right to protect the State through accession though he hedged it with the condition of plebiscite under UN auspices. His advice was accepted and V P Menon was sent to negotiate with the Maharaja"

Oct. 26 : Maharaja Hari Singh signs the Instrument of Accession, similar to that signed by the other princes.

Oct. 27, 1947 : Mountbatten accepts the Maharaja's offer, but with a damning rider that was to become a millstone around India's neck in the coming decades. (See Annexure of Instrument of Accession).

### **The raids and India's response**

The full scale raid on Jammu and Kashmir begun on Oct. 21-22, 1947. (Nehru received information on Oct. 24 and characteristically found it worthwhile only to be casually mentioned to Mountbatten at a buffet dinner in honour of the Siamese Foreign Minister) led by experienced Pakistani military leaders familiar with the terrain and equipped with modern arms, they poured down in numbers estimated at between 2,000 and 5,000 strong initially, with a fleet of 300 lorries. On their way they captured Garhi and Domel and then arrived at Muzaffarabad. The raid of the tribals is to be distinguished from the raids from West Punjab on Jammu province which commenced much earlier. The Muslim soldiers of Maharaja's forces deserted and joined the raiders with the result that on Oct. 24, 1947 they captured the Mahura Power house which supplied electricity to Srinagar. Their announced goal was to celebrate Id in Srinagar on Oct 26, 1947.

The raiders ostensibly wanted to relieve the distress of their co-religionists. But they indulged in widespread loot and arson, rape and massacre, finishing all that came in their way. The town of Baramulla was stripped of all its men folk and wealth when they took possession of it. On recapturing it, Indian troops that of the town's 14,000 population, only a "thousand were left.

In Jammu province, the atrocities were aimed at the Hindus and Sikhs. The non-Muslims in Bhimber, Rajouri, Kotli, Mirpur and Deva Vatala had to face total annihilation in the early stages of the occupation by Pakistani forces in the garb of raiders. The town of Mirpur saw the massacre of more than 20,000 Hindus and Sikhs on and after Nov. 25, 1947. Many of the victims were refugees who had taken shelter in the town from elsewhere. Indian forces at this time were concentrating in beating back the tribal raiders in



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Kashmir province.

Back in Kashmir province, the Maharaja's forces under the command of Brig Rajinder Singh, despite the large scale desertion by Muslim troops, fought till the "last man and last bullet" at Uri. Brig. Rajinder Singh died in the battle. On Oct. 27, a few Indian planes, hastily commandeered at the initiative of Sardar Patel who ordered the cancellation of all civilian flights, landed in Srinagar airport, carrying troops led by Lt Col. Ranjit Rai. He repulsed off the raiders at Pattan and laid down his life. Meanwhile Maj. Som Nath Sharma held off the raiders at Badgam to save the airport. He saved the airport, but paid with his life.

Subsequent Army action, backed by the Air Force, saved the State from Pakistan, but not entirely Mirpur and Muzaffarabad were lost because of insufficient fuel supplies. Gilgit Agency was grabbed by Pakistan with the help of the British to whom it had been leased for 60 years in 1935. A British officer, Maj. Brown, unfurled the Pakistani flag there on November 4.

Once India took the case to the UN on Jan 1, 1948, Pakistan was provided with yet another opportunity. It turned India's complaint to its advantage, helped in no small measure by the British and the Americans. The subsequent UN-brokered ceasefire and the demarcation of the ceasefire line in 1949 provided a temporary respite, but it also left Pakistan with a one-third of what was by then Indian territory. Pakistan still continues to hold this territory in illegal custody, thanks to lost opportunities courtesy successive Congress regimes at the Centre.

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## 4. MILITARY ARRANGEMENTS AT THE TIME OF PARTITION

**Military arrangements at the time of partition of the country were following :**

General Auchinleck was the supreme commander of forces in both the countries India & Paskistan.

General Lock Hart was the commander in chief of Indian forces.

General Gracy Douglas was the Commander in Chief of Pakistani forces.

General Ismay was the Military secretary to Defence committee.

Mountbatten become the Ist Governor General of India where as Mohd. Ali Jinnah was the Ist Governor General of Pakistan.

A Defence council headed by Governor General was formed in India to take the operational decisions. Hon'ble Prime Minister of India, Pt Jawahar Lal Nehru, S. Patel the Hon'ble Home Minister of India, S. Baldev Singh the Hon'ble Defence Minister were the members of the Defence council which was headed by Mountbatten, the Governor General himself. Operational matters were discussed and decided in this council instead of a full fledged cabinet. Mountbatten got the opportunity to influence every decision regarding defence and operations.

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## 5. THE CLASSIFIED EXTRACTS FROM BRITISH RECORDS

### **The classified extracts from British records regarding "Invasion of Pakistan in Kashmir in 1947"**

With Pakistan's escalating involvement in Poonch, the Maharaja's government appealed to India for military equipment. An indent for supplies was sent on 1st October and this was soon followed by a request that Indian forces be stationed near the border so that they could come to the state's rescue if the need arose. The Indian government, anticipated that Pakistan would try to seize Kashmir by force of arms. It therefore, took a prompt decision to assist the state with military supplies. Patel wrote to the defence Minister, Baldev Singh, on 7 October: .

*"I hope arrangement are in train to send immediately supplies of arms and ammunition to Kashmir State. If necessary, we must arrange to send them by air.*

*I think the question of military assistance in time of emergency must claim the attention of our Defence Council as soon as possible. There is no time to lose"....*

The decision that arms should be supplied to Kashmir on top priority basis was simply derailed by the Commander-in-Chief, General Lock Hart, acting in collusion with Field Marshal Auchinleck. Lock Hart took the position that no arms were available in Delhi. Army Headquarters asked Supreme Headquarters to let them know what arms were available and where in depots elsewhere in the country. The latter raised the question: could arms be supplied to states which had not yet acceded to either dominion. In this connection, reference was made to a decision taken by the Joint Defence Council that no arms should be made available to Hyderabad without the Council's approval. Though the decision was specific to Hyderabad, it furnished a pretext for stalling action

on the government's decision. Auchinleck and Lock Hart knew that Pakistan would protest vigorously if military supplies were sent to the Maharaja and they were reluctant to get drawn in to an inter-dominion controversy. Despite increasingly urgent appeals from the Kashmir state authorities, no arms were made available by the Indian army right till 22 October, when Pakistan launched the invasion of the Jhelum valley by tribal lashkars.

The Indian government first learnt of this grave development on the evening of Friday, 24 October, when a desperate appeal for assistance was received from the Kashmir state authorities. The Governor-General and Prime Minister were both present at a dinner party that evening at the Thai Embassy and Nehru took Mount Batten aside to inform him about the crisis. A meeting of the Defence Committee was held the next morning in order to consider Indian's response. Over the next two days- the weekend of 25 and 26 October - the Government of India would take decisions of great historical importance.

### **25 October 1947**

The fact that the crisis was discussed in the Defence Committee rather than in plenary meeting of the Cabinet was not simply a matter of administrative detail. It permitted Mount batten, as Chairman of the Defence Committee, to play a critical role in policy-making, a role from which he would have been excluded if the initial deliberations had taken place in a meeting of the full Cabinet. Moreover, the meeting on 25 October established a precedent: till the end of 1947, all important questions relating to Kashmir were decided not in the Cabinet but in meetings of its Defence Committee. This allowed Mountbatten to play a role which far exceeded that of a constitutional figurehead and which culminated, at the end of the year, in the decision to refer the Kashmir issue to the United Nations.

The defence committee met at 10 a.m., on 25 October, under Mountbatten's chairmanship. General Lock Hart informed the members that he had received a telegram on the previous day from



the acting Commander-in-Chief of the Pakistan army, Lieutenant General Sir Douglas Gracey. This conveyed that a force of 5,000 tribesmen had entered Kashmir and seized Muzaffarabad and Domal on 22 October. It warned that the force was about to attack Kohala. The Prime Minister added that he also had information about large-scale raids in the Jammu area, right up to Poonch. He pointed out that the trucks and arms which had been supplied to the raiders could have been provided only with the assistance of the Pakistan authorities. He had received information that invasion had been planned a fortnight earlier at a conference in Rawalpindi.

By the time Gracey's cable was received, it was already outdated. It suggested that the largest of the raiders was Kohala, a border town located a few miles south of the Muzaffarabad. In fact by the time the cable received on 24 October, the raiders were already in the neighbourhood of Uri, almost halfway to Srinager, the summer capital of the state. Thus when it met on the 25th morning, the Defence Committee was not fully aware of the gravity and immediacy of the threat to Srinagar.

Against this background, Nehru and Patel brought up the question of the weapons which the army had been instructed to send to Kashmir. When General Lock Hart came up with the excuses noted previously, Patel at once point out that the Joint Defence Council decision was being misinterpreted. The minutes of meeting made it clear that the Council's decision concerned Hyderabad alone. Mountbatten agreed that this was the case. The Commander-in-Chief having been over ruled, the Cabinet Defence Committee decided that Army Headquarters should depute officers that very day to pick up arms from the various depots and supply them to Kashmir. Chartered aircraft were to be placed at their disposal for this purpose.

What else was required to save Kashmir from the invaders? The Prime Minister reiterated his view that the only way in which the Maharaja's government could save the situation was through full cooperation with the popular forces represented by Sheikh Abdullah. Abdullah Should be invited to lay down the policy to

meet the situation and the National Conference should agree to cooperate with the Maharaja. There was no advantage in taking up the question of accession before this condition was met. The Prime Minister's position as we saw was based on his conviction that the invasion could be successfully opposed only if the Kashmir authorities were backed by popular support. Nehru insisted that the Maharaja's accession should have the support of the biggest mass organisation in the state.

Sensing that his ministers were determined to give the assistance of the Kashmiris, the Governor General argued that it would be a folly to send troops into a 'neutral' state. Pakistan, he felt, could do exactly the same thing, thus precipitating an inter-dominion war. Mountbatten urged that assistance should not be provided before the state had temporarily acceded to India. Pakistan would then have no right to intervene. Drawing a parallel with Junagadh, he proposed that the will of the people concerning accession should be ascertained as soon as law and order had been generally restored. This, he felt, would avoid provoking Pakistan.

Sardar Patel questioned Mountbatten's reasoning. In his view, Pakistan would object to India's coming to the assistance of the state whether or not it was preceded by accession. He saw no reason why India should not respond to a request for assistance from a friendly state which had been subjected to invasion. Nehru agreed with Patel that it would be perfectly legitimate for India to respond to the appeal received from the Jammu and Kashmir government. He added that he accepted the principle that a final settlement on accession should be made after consulting the people. The debate on prior accession ended on an inconclusive note.

It was left to Patel to pose the Question whether India was in position to render military assistance to Kashmir on an effective scale. Mountbatten offered the view that, as far as the Vale of Kashmir was concerned, most reinforcement would have to be flown in by air, though some could be sent by road over the next two or three weeks. General Lockhart said that he could not confirm this without further examination; it was highly probable, however, that troops could be

sent to Jammu. V.P. Menon proposed that the Indian army should take over the Jammu front, permitting the Maharaja to concentrate his own troops on the Srinagar front. This view was generally accepted. Nehru suggested that Indian air force should be brought into the operations, particularly for reconnaissance purposes and as show of strength. Mountbatten threw his weight against any precipitate action, emphasising the need for further information.

The committee finally decided to direct the Chiefs of Staff to 'examine and prepare plans' for (a) Indian troops to take over the Jammu front; (b) use of RIAF planes in Kashmir, particularly for reconnaissance and show of strength; and (c) the Possibility of flying Indian troops to Srinagar.

Such were the limited and tentative decisions taken by the Defence Committee on 25th October, in the absence of fuller information. The Committee was not yet aware of the immediacy of the threat to Srinagar. It was understood that the plans the service Chiefs were required to 'examine and prepare' were contingency plans for inducting Indian troops' in case this should be necessary to stop the tribal invasion'. The focus was on sending Indian troops to Jammu rather than Srinagar. In order to remedy the lack of concrete information, it was decided that V.P. Menon should fly to Srinagar in order to assess the situation and suggested what further action was required. It was agreed that Menon should discuss the question of accession with the Maharaja as well as the possibility of cooperation between the State government and the National Conference. He was not authorised, however, to offer any assurance regarding acceptance of accession.

Menon flew to Srinagar the same day and found the city gripped by panic. He later wrote:

When I landed at the airfield, I was oppressed by the stillness as of a graveyard all around . The road leading from the aerodrome to Srinagar was deserted. At some of the street corners I noticed volunteers of the National Conference with lathis who challenged passers-by; but the State police were conspicuous by their absence, Mehr Chand Mahajan [the Prime Minister] apprised us of the perilous

situation and pleaded for the Government of India to come to the rescue of the State..... The Maharajah was completely unnerved by the turn of events. There were practically no State Forces left and the raiders had almost reached the outskirts of Baramula. At this rate they would be in Srinagar in another day or two.

On Menon's advice the Maharaja and his family immediately left Srinagar for the safety to Jammu. Later in the evening, Just as he was preparing for bed, Menon received a Frantic call from Mahajan, who said that rumours were circulating to the effect that the raiders had infiltrated in to Srinagar itself and that it was no longer safe for Menon to remain in the city. Menon, Mahajan and the air crew bundled in to an old jeep the only transport left behind by the fleeing Maharaja and took off the airport.

Menon's report to the Defence Committee on 26th October left no doubt that help was urgently required if Srinagar was to be saved from the invaders. General Lock Hart provided the further information that the Commander of the Kashmir State Forces had requested that an Indian infantry battalion be flown to Srinagar that very day. However, the service Chief, supported by Mountbatten, sought to dissuade the ministers from an airlift on the grounds that it involved great risks and dangers. As they listed these hazards, Prime Minister Nehru countered each point:

Lock Hart disclosed that in keeping with the decision of the Committee the previous day, the 1st/5th Gurkha Rifles had been alerted to be ready for a possible operation. This posed problems: apart from the fact that it would be preferable to use Indian troops for the operations, the 1st/5th Gurkha Rifles had a large component of British officers. Objections could arise to the employment of these officers in Kashmir. It was therefore decided that the 1st Battalion of the Sikh Regiment would be earmarked for the airlift.

Finally General Lock Hart asked if Kashmir was of vital importance to India. Nehru and Patel both declared without hesitation that the future of Kashmir was vital to India's very existence. Thus the government refused to be deterred by the cautionary counsels of the Governor.



General and service Chiefs, The Committee concluded that though there were military risks involved in airlifting a battalion, these were worth taking in the prevailing circumstances.

As regards accession, the Committee was agreed on the "desirability of setting up an interim government under Sheikh Abdullah simultaneously with the acceptance of Kashmir's accession. It was also agreed that after law and order had been restored in the state, the will of the people would be ascertained on the matter of accession.

Faced with a desperate situation, the Maharaja was at last prepared to shed his earlier reluctance to appointing Abdullah to office. An assurance to this effect was given to the Government of India and the Governor-General speedily accepted the instrument of accession, noting at the same time India's intention to consult the people once law and order had been restored.

### **The Airborne Operation**

Arrangements for the airlift now proceeded at breakneck speed. Patel at once requisitioned all available civil aircraft by means of a radio broadcast. This yielded a good catch since a substantial number of civil airplanes were operating ferry services for refugees to and from Delhi. Following the state's accession to India, the service chiefs shed their initial reservations and spared no effort to make the airlift a success. Preparations proceeded non-stop throughout the night and as dawn broke over the Safdarjung Airport on the 27th Morning, the first batch of the Sikh battalion began to emplane. As it was not known whether the Srinagar airfield was already in enemy hands, the commanding officer of the battalion, Lieutenant Colonel Dewan Ranjit Rai, was instructed to circle overhead and land only if the airfield was free of the raiders. In case of doubt, his instructions were to fly to Jammu. At 10:30 a.m Delhi received a wireless message from the Srinagar airfield conveying the news that Lieutenant Colonel Rai and his troops had landed.

After securing the airfield, Lieutenant Colonel Rai led a contingent of his troops to Baramula, having received reports that the raiders had reached that town. The National Conference was

able to furnish the required transport as Nehru had anticipated. At Baramula, Lieutenant Colonel Rai found that he was heavily outnumbered by the invasion force. He therefore decided to withdraw to Pattan. At this point the gallant officer fell in action. By his daring, he had secured the Srinagar airfield, making a vital contribution without which the planned operations would have been impossible. By the evening of the 27th, the Sikh battalion not only controlled the airfield but had also established itself at Pattan which offered the only hilly terrain between Srinagar and Baramula. Occupying the heights at Pattan, the Sikhs were positioned to control the road to Srinagar. Thus, by the end of the first day, Srinagar had been saved. The raiders were in retreat.

Mountbatten himself was surprised by the unqualified success of the airlift. Even as the operation was in progress on the 27th, he reminded Patel in writing about his misgivings. 'I must remind you,' he wrote, 'that the risk is great and that the chances of keeping the raiders out of Srinagar are not too good.' But when the success of the airlift was finally established, he paid a fulsome tribute. Mountbatten, who was the supreme Allied Commander in Southeast Asia during World War II, said that in all his war experience he had never come across an airlift of this order being undertaken successfully at such short notice.

How would Jinnah react to the Indian initiative? Nehru considered this question—and came to the wrong conclusion. He wrote on 27 October:

Kashmir has now formally acceded to the Indian Union and we have accepted that accession. This makes a big difference in the constitutional position and if the Pakistan Army goes in to Kashmir State anywhere it means war. I rather doubt if they will do this... as this would mean their having to protect their whole West Punjab border. In any event we must be perfectly prepared for all consequences.

*(Extracts taken from S. Das. Gupta's Book "Diplomacy in Kashmir")*

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## 6. A PASSAGE FROM MEHAR CHAND MAHAJAN'S BOOK "LOOKING BACK"

*Views of new Prime Minister Mehar Chand Mahajan who replaced Ram Chand Kak on Oct. 1947.*

"When I assumed charge on 15th October, there was some communal trouble however, but not of a very serious character. In Poonch, trouble had been started by the local Muslims where they were in great majority. They looted the Hindu and Sikh houses, abducted their women and killed a number of people. The State forces, which were then controlled by Major General Sir Henry Scott, Chief of Staff, took prompt action and stopped the trouble. According to one version, the State forces killed a large number of people than was necessary to allay the trouble, and this caused resentment amongst the local Muslim population. According to another version they only did what in those circumstances was necessary. The trouble, however, recurred again and the local Muslim population started a general campaign of killing Hindu and Sikhs of abducting their women, burning their houses and looting their property. The troops were themselves besieged and confined themselves to the three areas of Bagh, Rawalkot. The Hindu and Sikh residents of the localities who managed to escape also collected in these three places. It was obvious that the trouble in this area was started by Muslims against the non-Muslims and in spite of the best efforts of the State forces, it could not be fully controlled."

### PAK INVASION ON KASHMIR

Transport, arms, ammunition and military officers were supplied by the Pakistan Government. We had tried to blow the bridge that could and did prove access to the tribesmen into Kashmir. But as stated earlier, this attempt had failed for want of dynamite in

the State.

Now they pushed on. At Domel the Muslim officers and soldiers of the State forces who had been guarding this frontier under Col. Narain Singh deserted and joined the raiders after killing their commander at the Domel dak bungalow.

Flushed with arson, loot, and murder, the tribesmen now pushed on the way to Srinagar. At Garhi, the Chief of Staff of the Dogra Army with his small force tried to stop their advance. He held them up for sometime but ultimately fell against enormously superior forces.

On taking over as Prime Minister, Shri Meher Chan Mahajan assessed that if Kashmir did not accede to India, within a week it will go into the hands of Pakistan.

He took the Maharaja into confidence and with the help of Sardar Patel and some other leaders whom the Maharaja trusted he made contacts with Delhi. On 23<sup>rd</sup> October he conveyed the acceptance of the Maharaja of accession of Jammu and Kashmir to India. But New Delhi took three days to decide and only on 26<sup>th</sup> October did V.P. Menon arrive in Srinagar to take the signature of the Maharaja on the instrument of accession.

### PRECIOUS TIME LOST

In the meantime Pakistan attacked and occupied area upto Domel; the delay, it may be stated, occurred primarily in working the modalities of handing over the control of the Forces to Sheikh Abdullah. The worst fears of the Maharaja had come true! If this crucial delay had been avoided, river Jhelum would have been the border. One more day and even Srinagar would have gone to Pakistan. Although Indian Forces could not push back Pakistani army from areas beyond Domel, but they halted their march to Srinagar.

Already Mirpur, Bhimber, Kotli and Rajouri had been swallowed by the tribesmen and thousands of non-Muslims were



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trap ped. Not a single army battalion was sent to Jammu Province upto 8th November. With the help of very small State force, the town was guarded by the local youth who were trained in self defence. By 10th November towns beyond Jhangar had been taken over by Pakistan (now POK). Only Jhangar Kasba was saved by a small force led by Brigadier Chattar Singh. Surprisingly force sent for these areas was diverted to Gilgit and wasted.

On 10<sup>th</sup> November, a battalion of Indian Forces reached Jhangar to safeguard this strategic point but was stopped from advancing further to Mirpur after taking only Rajouri on the other side of Nowshehra. Gen. Pathania was trapped at Kotli and was rescued by a small force sent there on 24<sup>th</sup> November. Kotli was not, however, taken back but in this operation for rescuing Gen. Pathania, Mercifully about 10,000 non-Muslims were saved from extermination. Alas! no Pathania was trapped in Mirpur.

Immediately after taking over as Prime Minister of J&K on 15th October 1947, Shri Meher Chand Mahajan who along with the Maharaja had taken a tour of the sensitive area of the State, has this to say in his book 'Looking Back',- "We took the road to Akhnoor where we crossed the Chenab and went to Beawar village that had been raided during the night. I went to the village and saw dead bodies lying about. There were a few men of the State forces there and we told them to dispose of the bodies. We proceeded further on the border and had our lunch in the dak bungalow at Bhimber which is situated just two miles of the border of Pakistan and within a few miles of the town of Gujrat. One of the leading Ministers of Pakistan Government was in Gujrat (Pakistan) at the time. It transpired that he had organized an armed raid on this dak bungalow for the next day, when according to our original programme, His Highness and myself would have been at Bhimber. The raid did take place the next day as arranged, and the dak Bungalow was destroyed. We could not proceed further to Mirpur as it was getting dark so we started our return journey to Jammu. We noticed burning of Muslim and Hindu houses on both sides of the road. People were standing out on the road with all kinds of

crude weapons with which to commit murder and arson. Small bands of State forces were patrolling the road and trying to do what they could to restore law and order and to stop murder and arson but without much success. The Muslim chief of Staff and a Muslim Brigadier of the State forces were there trying to render what help they could in restoring confidence among the people. The next day we went to Kathua side where similar happenings had taken place. A considerable number of Muslim residents of the State were leaving their villages, bag and baggage, driving their cattle, intending to go to Pakistan. They were accompanied by State Officers who were trying to give them as much protection as was possible. A number of these people got killed during the move. What had happened in East Punjab and West Punjab was now happening in the province of Jammu along the whole of its border from Kathua to Kotli and Mirpur. During our four-day stay in Jammu, we did our best to make people see reason. We made efforts to restore law and order with the help of the military and some little police force that was available. We were assured by the local authorities that they would be able to manage the situation. But the surprise raids from the Pakistan side of the border were causing great panic and they could not be controlled except by military operations.

“On the 23<sup>rd</sup> October instead of going by road, we flew from Jammu to Srinagar. We flew over affected areas namely the towns of Mirpur, Kotli and Rajouri which had been besieged by local Muslims with the help of men of the Pak army. We then flew to Muzaffarabad but owing to clouds we could see nothing. Meanwhile the tribesmen from the frontier using Pakistan lorries, jeeps and other conveyance and armed with Pakistani weapons had entered the State on 23<sup>rd</sup> October through Muzaffarabad. These tribesmen were Pakistani nationals, as they advanced they were joined by other Pakistani citizens. The raid had been organized by an ex-officer of the Political Agency at Peshawar, at the instance and with the connivance of the Pakistan Government.”

Overcoming the hurdles, the instrument of accession was finally signed by the Maharaja on 26<sup>th</sup> October after the appointment

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of Justice Meher Chand Mahajan as Prime Minister of Kashmir and active persuasion by the Maharani who was from Himachal. Kashmir merged into India on acceptance of the agreement on 27th October 1947.

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*Once B.K. Nehru the then Governor of Jammu and Kashmir said Joking by that he being of Kashmiri origin could not buy an inch of land in his ancestral state, while his orderly a Kashmiri subject could by land anywhere in India. How can in the era of globalization this policy of segregation continue indefinitely?*

## 7. ARTICLE 370-A THORN

### In States Integration with Rest of India

The most counter - productive provision of the constitution of India is Article 370 which provides that notwithstanding anything contained in the constitution., the power of Parliament to make laws for the state of Jammu & Kashmir shall be limited. The Article limits parliament's jurisdiction over the State to Defenses, Foreign affairs and communications. All other laws framed by the central legislature require the consent of the state. While Parliament has unfettered power to frame laws for all subjects of the states of the union, on subjects included in the union and concurrent lists, it cannot do so in relation to Jammu & Kashmir.

On October 26, 1947, Maharaja Hari Singh, as the sovereign ruler of Jammu & Kashmir, signed the instrument of accession through which he acceded to the dominion of India. He accepted that the matter specified in the schedule to the instrument of accession would now vest in the Indian legislature to make laws for Jammu & Kashmir. Article 370, originally numbered as Art. 306. A however, placed the state on a separate constitutional barrier between Jammu & Kashmir and the rest of the country, preventing the state's integration with India's mainstream political, social and economic activity.

As it exists now, Art. 370 is included in part XXI of the constitution, which is titled "Transitional and special provisions". The origin of this article lies in the vacillation of the leadership of the time, especially Jawaharlal Nehru, regarding this princely state's accession to India.

**The build - up to a special status and Nehru's role**

From the very beginning, after there was no option but to accept Hari Singh's offer of accession, Nehru was keen that Jammu & Kashmir should not be treated at par with the other princely states



that had joined the dominion of India and which were later integrated into the union of India.

He was aware of Sheikh Abdullah's political aspirations which contradicted those of Sardar Patel who was to forge a united country on the basis of his vision of India as a single nation state.

The instrument of accession by Hari Singh was no different from that signed by other rulers of princely states. It required the princely state to surrender their sovereignty on three subjects-Foreign affairs, defence and communication. The credit for negating the balkanizing effect of such an accession goes to the founding fathers of the Indians constitution, and especially to Sardar Patel's role as States Minister. For a while after accession, the constituent assembly acknowledged the right of the acceding states to prepare their separate constitution and devise their relationship with the Union. In Nov, 1948 the ministry of states constituted a special committee to prepare to broad guidelines for the constituent assemblies of the states. But the process of setting up constituent assemblies was extremely slow: Only three states, Saurashtra Union, Travancore & Cochin and Mysore were prompt in setting up constituent assemblies. To overcome this problem, the states ministry organized a conference of the premiers of the states in Delhi in 1949. The premiers decided at the conference not to wait for the setting up separate constituent assemblies but to entrust the task to the constituent assembly of India: The state subject to be decided upon in consultation with the states. In a sense, this step laid the foundation of an irreversible union of the states into a composite whole in which the union govt. and parliament were to emerge as paramount authority over the entire territory of the republic of India.

Accordingly, the drafting committee of the constituent assembly prepared a draft of the constitutional provisions for the states and this was circulated among the state govt. for their concurrence. All of them accepted the provisions except the Govt. of Jammu & Kashmir. This was the first step towards rejecting the integrative polity of India.

For a better appreciation of the folly of incorporating Art.

370, we need to understand the forces at work at that moment of independent India's history. By then the National Conference, led by Sheikh Abdullah, had taken control of the reigns of power in Jammu & Kashmir and it had begun to claim a separate political identity for the state on the strength of its Muslims majority population. The claim was admitted by Nehru who exercised "control" over Jammu & Kashmir affairs to the exclusion of everybody else barring N Gopalaswami Ayyangar who, by virtue of the fact that he had served as Hari Singh's dewan and had close links with Sheikh Abdullah, was appointed as minister without portfolio and entrusted to deal with Kashmir. Sardar was not consulted by Nehru while taking this decision. V Shankar, Vallabhbhai Patel's secretary and author of 'My Reminiscences of Sardar Patel' informs us that Nehru was unable to face Sardar and looked for "outside Support" for his Kashmir policies, which he found in Ayyanger and John Mathai. Shankar also talks about the "wrong assessment" of Sheikh Abdullah by Nehru and Ayyanger and how they allowed him to "dictate terms" against the better sense of Sardar who "did not trust the Sheikh nor did he share Nehru's assessment of his influence in the state ". Nehru believed that "only Sheikh Abdullah could swing the vote and was prepared to make any concessions".

It is an irony that Nehru was convinced of Sheikh Abdullah's case for a separate political identity for Jammu & Kashmir on the basis of its Muslims majority: By capitulating to his demand, Nehru, and other Congress leaders of the time, were also legitimizing Mohammed Ali Jinnah's pernicious two nation theory. Nehru's willingness to accommodate Sheikh Abdullah's aspirations amounted to accepting the existence of a sub-national identity based on religion which the Indian constitution was to later reject. Also, by institutionalizing political power on the basis of the Muslims majority of the State, he and Sheikh Abdullah subordinated Jammu and Kashmir's Hindu, Buddhists and Sikhs to the permanent status of minorities. It must be noted here that no other constituent part of India was given a special status on similar grounds.

On his part, Nehru argued that he needed to keep the National Conference on his side, keeping in view the ongoing debate in the UN on Jammu & Kashmir. Sheikh Abdullah was aware of Nehru's views and took full advantage of them. As soon as the UN- brokered ceasefire came into operation on Jan. 1, 1949, the tone and tenor of Sheikh Abdullah's statements changed. To begin with, he refused to acknowledge the constitutional primacy of the Maharaja and wrote to Nehru: " I am therefore constrained once again that the choice is finally between the Maharaja and the people and if the choice is not soon made it might lead us into very serious trouble both militarily and politically. The only alternative is that his highness should abdicate in favour of his son and that there should be no reservation whatsoever, in the administration of the various subjects under the Ministers." (Sardar Patel's correspondence, Vol .I, ) He followed this up with his revealing interview to a British newspaper, the Scotsman, published on April 14, 1949, in which he said, " Accession on either side cannot bring peace... we want to live in friendship with both dominions. Perhaps a middle path between them, with economic cooperation with each, will be only way of doing it. But an independent Kashmir must be guaranteed not only by India and Pakistan, but also by Britain, the United States and other members of the United Nations". He stressed: " when during the crisis India accepted the Maharaja's accession, Pandit Nehru insisted that it was only provisional and that the people must decide later".

### **Sardar Patel protests**

Outraged by his views, Sardar Patel wrote to Ayyangar, pointing out Sheikh Abdullah's conversion to an independent Kashmir. Ayyangar, in turn, asked Dwarka Nath Kachru, personal secretary to Nehru, to inform sheikh Abdullah of the Govt. of India's dismay.-' Informing Sardar Patel of the action that had been taken, Ayyangar wrote: " I have asked him to inform the Sheikh that, reading between the lines. I suspect a plan, the first step of which is this blessing by the premier of Kashmir of the idea of an independent Kashmir and this public expression of his conviction that accession

to India will not bring peace, and the first step of which may well be perhaps one of the greatest betrayals of history. ...”

Nehru could not have been ignorant of what his close associate described as the impending “one of the greatest betrayals of history”. Yet he choose to pander to Sheikh Abdullah's whims and fancies. Meanwhile, as the UN begun to take an increasing interest in the affairs of Jammu & Kashmir at the behest of Pakistan, Sheikh Abdullah became more vocal about his lack of faith in the finality of the accession.

Congress leaders, with a view to placate Sheikh Abdullah, decided to ask Hari Singh to leave Jammu & Kashmir temporarily. In order to convince him, they fell back upon Sardar Patel whom the Maharaja trusted. ( later, the congress was to betray both Sardar Patel and Hari Singh). By a special cable Sardar Patel invited Hari Singh to come to Delhi to discuss matters which “admit of no delay”. On arrival, Hari Singh was told by Patel that Sheikh Abdullah was insisting on his abdication as this would help him in winning the plebiscite. Much against his better judgement ,Patel went on to tell Hari Singh that his absence from the state would be in the interest of Jammu & Kashmir and India.

Hari Singh conveyed his distress to Patel: I would not, however, be human if I did not express my keen sense of disappointment and bewilderment at having been called upon to make such a sacrifice of personal prestige, honour and position when all along I have been content to follow, sometimes even against my own judgement and conscience, the advice in regard to the constitutional position in the state which I have been receiving from the Prime Minister of India or yourself, sometimes against the arrangements which were agreed to only few months before. Nor would it be fair on my part to conceal from you my own feeling while sheikh Abdullah has been allowed to depart, from time to time as suited his inclinations, from the pledged and written word, to act consistently in breach of the loyalty which he professed to me prior to his release from jail and the oath of allegiance which he took when assumed office, and to indulge openly alongwith his



colleagues in a campaign of vilification and foul calumny against me, both inside the State and outside..." The maharaja concluded by seeking an assurance from Patel that this was not a prelude to his abdication, saying, "I regard such a demand from my Prime Minister and his colleagues as a clear breach of the many understandings on which constitutional arrangements have been made from time to time and a positive act of his disloyalty, treachery and deception."

Sardar Patel assured the Maharaja: "Regarding the points which your highness has referred to me, I should like to state that the question of your highness abdication does not arise. We have made the position quite plain to Sheikh Mohammad Abdullah. . . .

After Maharaja Hari Singh moved from the state, leaders of the National Conference were invited to Delhi for a conference to work out the constitutional relationship of Jammu & Kashmir with India. The meeting took place in May 1949. During the discussions, the National Conference leaders insisted on the Maharaja's abdication. More importantly, they refused to accept the inclusion of the state into the territory of India and the applications of the provisions of the Indian constitution to Jammu & Kashmir. They went to the extent of demanding the withdrawal of the Indian army from the State and restoration of Kashmir's right to have its own defence force. The National Conference delegates were told that they were raising issues which had already been determined by the instrument of accession. The conference, they were reminded, was at deciding the modalities of the union.

An agreement was finally arrived at and it envisaged:

- (i) The provisions of the constitution of India with regards to the govt. in the states would not apply to Jammu & Kashmir;
- (ii) The constitution of the state would be framed by the constituent assembly of Jammu & Kashmir, which would represent the people of the state;
- iii) The future of the ruling family of the Maharaja would be decided by the constituent assembly of the state;

- iv) The division of powers between the state and the union would be based on the terms specified in the Instrument of Accession and the union jurisdiction would extend to the subjects in respects in respect of which the dominion Government had assumed powers by virtue of the Instrument of Accession;
- v) The Constituent Assembly of the state would determine such other subjects which would be transferred to the union and in respect of which the union would assume jurisdiction over the state;
- vi) The provision of the constitution of India with regard to the jurisdiction of the union, citizenship of the union, fundamental rights and the related legal safeguards, principles of state policy and the jurisdiction of the federal jurisdiction would extend to the, subject to the modification that the provisions would not impinge upon the special domiciliary rights in force in the state and the economic reforms the interim Government would undertake;
- vii) The administrative and operational control of the state army would remain vested in the Indian army;
- viii) The President of the Indian Union would be vested with the powers to modify or terminate the operation of the specific & provisions of the constitution of Indian in regard to Jammu & Kashmir State, on the recommendation of the consituent assmebly of the state. Sardar Patel's Correspondence, (Vol. I, 226) capitulation, which was to become the hallmark of successive Congress regimes at the center in their dealing with Jammu & Kashmir, had begun.

### **Abdullah backs out, Nehru capitulates**

Not even a day had passed after these arrangement were worked out when Sheikh Abdullah wrote to Nehru and sought clarifications on various issues which amounted to their non acceptance. Nehru feigned dismay and reiterated the points covered by the agreement. He then visited Srinagar in the last week of May 1949, and held further discussions with Sheikh Abdullah and his

colleagues. He assured them that the provision of the constitution of India not included in the instrument of accession would not be extended to the State and the Constituent Assembly of the state would be vested with the residuary authority to formulate constitutional provision with regard to matters which were not covered by the constitution of India.

In the light of the agreement, the interim Government of Jammu & Kashmir, under the authority of the Maharaja, nominated four members to represent the state in the constituent assembly of India in May 1949. Four members are Sheikh Mohd Abdullah, Mirza Afzal Beg, Maulana Masoodi and Moti Ram Baigra. The representatives joined on June 6, 1949. On June 9, 1949, Maharaja Hari Singh announced his decision to leave the state and nominated his son, Yuvraj Karan Singh Regent of the State.

Soon after this, the National Conference assumed complete control over the Government of Jammu & Kashmir and began trying to wriggle out the agreement which they had entered into with Nehru. A number of closed door meetings were held to discuss the agreement at which only Muslim members of the National Conference hierarchy were invited. A number of Muslim leaders and officials who had opposed the accession of the State to India were also included in these discussions. The most significant outcome of these meetings was that they decided to ensure that the Muslim majority character of the State would not be impaired and the only safeguard to protect it would be to keep Jammu & Kashmir out of the constitutional organization of India.

Sheikh Abdullah did not apprise Nehru or anybody else of these views till the draft provisions of the Constitution of India which were evolved in the light of the agreement were sent to him for approval. The proposals were embodied in draft Art. 306-A, and they stipulated:

- i) The provision of the constitution of India with regard to part B states would not apply to Jammu & Kashmir State;
- ii) A constituent assembly would be convened in Jammu &

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Kashmir to draft the constitution of the State;

- iii) Provision of the constitution of India with regard to territories of India, Indian citizenship, fundamental rights and the related legal safeguards and the directive principles of State policy would apply to the State;
- iv) The other provisions of the constitution of India would apply to the state with such exceptions as were mutually agreed upon between the govt. of India and the State Government;
- v) The union would exercise powers with regards to the subjects which were specified by the President of India to correspond with the subjects transferred to the dominion government by the instrument of accession, in consultation with the state government, and such other subjects as would be specified by the President of India in consultation with the State Government;
- vi) The President of India would be empowered to modify, restrict or suspend the operation of the provisions of Art. 306-A on the recommendations made by the constituent Assembly of Jammu & Kashmir state.

Having finalized this draft in secrecy and in consultation with Sheikh Abdullah, Nehru proceeded on a foreign tour. He entrusted the task of piloting the draft through the constituent Assembly to Ayyangar. The subsequent protest against the draft in the congress can be reconstructed from V Shankar's account ( My Reminiscences of Sardar Patel) and from Sardar Patel's correspondence.

## STORM OF PROTEST IN CONGRESS

According to Shankar: "In the (Congress) party there was a strong body of opinion which looked askance at any suggestion of discrimination between the Jammu & Kashmir State and other states as members of the future Indian union and was not prepared to go beyond certain limits in providing for the special position of



Jammu & Kashmir. Sardar was himself fully in accord with this opinion, but due to his usual policy of not standing in the way of Pandit Nehru and Gopalaswami Ayyangar who sorted out problems in their own light, he had kept his views in the backgrounds. In fact, he had not taken any part in framing the draft proposals with the results that he sheared the proposals only when Gopalaswamy Ayyangar announced them to the Congress Party."

When Ayyangar put the draft for the party's consideration, there were howls of protest. According to Shankar, "The announcement was followed by a storm of angry protest from all sides and Gopalaswamy Ayyangar found himself a lone defender with Maulana Abul Kalam Azad an ineffective supporter. Metaphorically, the situation may be succinctly described by saying that both Gopalaswami Ayyangar and his proposal were torn to pieces by the party." The proposal, was in reality, that of Nehru; Ayyangar was merely trying to sell it.

On facing such a hostile reaction, Ayyangar rushed to Sardar Patel and appealed to him to come to his rescue. Sardar heard Ayyangar and lapsed into silence. To Shankar's query as to what reply he would like give, he said he would think it over.

The Sardar convened a meeting of the Congress Executive for the following day. The details of what followed are recorded in Vol. II of Shankar's *My Reminiscences of Sardar Patel* (P 61-64 ): "The meeting was one of the stormiest I have ever witnessed.. The opinion in opposition to Gopalaswami's formula was forcefully and even militantly expressed... even Maulana Azad was shouted down." It was left to Sardar to bring the discussion down to a practical plane and to plead that because of international complications, a provisional approach alone could be made.

Why did Patel agree to placate the congress members? Shankar provides the answer: "I was somewhat taken aback at Sardar's acquiescence in the draft formula of Gopalaswami Ayyangar and strongly felt that Sardar had compromised the position of the Indian union and other states in accepting the formula as the basis..

.He said, "I was deeply concerned at the situation. Gopalaswami had acted under Panditji's advice. If Jawaharlal were here I could have had it out with him. But how could I do so with Gopalaswami who was only acting under orders? If I did, people would have said that I was taking revenge on his confidant when he was away...." I then asked why he (Sardar Patel) had let down the country and the other states whose constituent assemblies had been scrapped in accordance with his advice and policy... "He said, after all, neither Sheikh Abdullah nor Gopalswami was permanent. The future would depend on the strength and guts of the Indian government and if we cannot have confidence in our own strength we do not deserve to exist as a nation." To others, Sardar said, "Jawaharlal royega."

Even while all this was happening, the working committee of the National Conference refused to accept this draft. It disapproved of the preamble to the article which stipulated that it was of a transitional nature. It also objected to the application of citizenship, fundamental rights and the related constitutional and legal guarantees as these would prejudice the domiciliary state subjects rules in force in the dice the domiciliary state. Sheikh Abdullah communicated to Ayyangar on Oct. 12, 1949, the views of his party. Ayyangar had a meeting in which he tried to persuade them to accept the draft article. The latter stuck to their stand.

"Ayyangar was" dismayed" at the attitude of the National Conference leaders. Nehru was away in the United states. In this situation, and with a view to please Nehru, Ayyangar agreed to redraft the Article. The new draft restricted the application of the Constution of India to the state to article-1. which defined the territories of the Union and the provisions related to Indian citizenship. He wrote to Sheikh Abdullah saying," "I am anxiously keen now as ever I have been to see that you are not given any cause for genuine or even imagined grievances in regards to the policy that the government of India are following in relation to Kashmir. I have, therefore, since you left me this morning, tried to find a way out of the present situation in regards to Art. 306-A..... I do hope you would appreciate the gesture I am making.

..Personally, I should like you to move this draft yourself in the house."

Ayyangar then wrote to Patel informing him of the change and the background to it, saying, "I have since thought over the matter and dictated a draft which, without giving up the essential stand we have taken in our original draft, readjusts it, in minor particulars in a way which I am hoping Sheikh Abdullah would agree to." "Patel replied: "I do not at all like any change after our party had approved of the whole arrangement in the presence of Sheikh Sahib himself. Whenever Sheikh Sahib wishes to back out, he always confronts us with his duty to the people. Of course, he owes a duty to India or to the Indians government, or even on a personal basis, to you and to Prime Minister who have all gone out to accommodate him. In these circumstances any question of my approval does not arise. If you feel it is the right thing to do, you can go ahead with it...."

But even the revised draft was not acceptable to Sheikh Abdullah. He wanted to have the draft amended and Mirza Afzal Beg gave notice of amendment. Finally, Ayyangar drew up a new draft in consultation with Beg which stipulated:

- i) Article-I, would like apply to the state and the state again would be included in the territories of the union of India;
- ii) No other provision of the constitution of India would be applied to the State accept with the approval of the interim government of the State;
- iii) The division of powers between the union and the State would be determined in accordance with the terms of the instrument of accession;
- iv) The President of India would be empowered to terminate or modify the operation of the constitutional provisions with regards to the State on the recommendation of the Constituent Assembly of the State;

- v) The State would be construed to mean the Maharaja acting on the advice of the council of ministers appointed under his proclamation dated March 5, 1948

But, get once again the nominated draft was also rejected by the National Conference. Ayyangar and Azad tried in vain persuade Sheikh Abdul and his colleagues, but they did not relent. The revised draft was also rejected by the State leaders. The Indian leaders were far from happy at the turn the events had taken. Nehru was away and for Ayyangar it was an ordeal to formulate a compromise. He wrote to Abdullah:

“Our discussion this morning, as I indicated to you, left me even more distressed than I have been since I received your last letter from Srinagar.

But this personal reaction of mine is irrelevant when I feel weighted with the responsibility of finding a solution for the difficulties that, after Pandit ji left for America and within the last few days, have been created. from my point of view, without adequate excuse”.

**Ayyangar wrote to Sardar Patel also:**

Sheikh Abdullah and two colleagues of his had a talk with me for about a hour and a half this morning. It was a long drawn out argument, and as I told you this morning, there was no substance at all in the objections that they put forward to our draft. At the end of it all I told them that I had not expected that, after having agreed to the substance of our draft both at your house and the party meeting, they would let me and Pandit ji down in the manner they were attempting to do. In answer, Sheikh Abdullah said that he felt very grieved that I should think so but that in the discharge of his duty to his own people he found it impossible to accept our draft as it was”.

Ultimately the original draft was presented to the house on act 17, 1949. The National Conference representative wanted the



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proceedings with a grim look on their faces without participating in the discussions. The President of Constituent Assembly waited for the National Conference members to move their amendments but they did not budge. Finally, the draft was voted as included in the constitution after being renumbered as Art. 370. On Nov. 25, 1947, the regent of the State Yuvraj Karan Singh, by a proclamation ordered that the relations between the state and the Union of India would be governed by the Constitution of India.

### **Ayyangar's defence in Constituent Assembly**

In the Constituent Assembly, the principle address in supports of Article 370 came from Ayyangar". "As the house is aware instrument of accession will be a thing of the past in the new constitution of India. The states have been integrated with the Federal Republic in such a manner that they do not have to the accede or execute document of accession for the purpose of the constitution itself" and in the case of practically all the states other than the state of Jammu & Kashmir, their constitution have been embodied in the constitution for the whole of India.

At this Maulana Hasrat Mohani facetiously remarked "why this discrimination please?" Ayyangar answered back: "The particular state is not yet ripe for this kind of integration". It is the hope of everybody here that in due course even Jammu & Kashmir will become ripe for the same sort of integration as has taken place in the case of other States..... We are also committed to ascertaining this will of the people by means of plebiscite provided that peaceful normal conditions are restored and the impartiality of the plebiscite would be granted. We have also agree that the will of the people through the instrument of a Constituent Assembly of the state as well as the sphere of Union jurisdiction over the state and the present moment we could established only an interim system. Art. 306- A (later renumbered as Art. 370) is an attempt to established such a system. Letter of course as was his won't Nehru absolved himself of all responsibilities when things started going wrong. Making a statement on the affairs of Jammu & Kashmir in the Lok Sabha on

July 24, 1952 (why then Sardar Patel was dead) ... A statement that dealt with the invasion by Pakistan, the accession, the case in the UN-he gave his version of why integration with the rest of the country had been before the UN. we had pledged to proceed with the consent of the people of Kashmir....." And Sardar Patel was all this time dealing with these matters..." without batting an eyelid, he passed on the blame to Sardar Patel for something for which he alone was responsible, for something against which Sardar Patel had made his displeasure known in no uncertain terms. According to Nehru, " This came to an end in Nov, I think of 1949 when we were designing our constitution in the Constituent Assembly. Well, we could not leave everything quite vague and fluid there. Something had to be stated in our constitution about Jammu & Kashmir State. That problem had to be faced by Sardar Patel. Now, he did not wish to say very much, he wanted to leave it, we all wanted to leave it in a fluid condition because of these various factors, and gradually to develop those relations. As a results of this, a rather unusual provision was made in our constitution relating to Jammu & Kashmir..." (Lok Sabha Debates, July 24, 1952. )

Selective amnesia or intentional distortion of truth by the man who claimed that he knew "more about Kashmir "than anybody else? Was Nehru's absence from the country in Oct.1949 a mere coincidence or planned with a purpose?

By then Ayyangar had succeeded to Sardar's chair and Shankar was a joint secretary in his Ministry. He records in his memories : "When I was working as his (Ayyangar's) joint secretary in July 1952 the self same Article came in for criticism in the Lok Sabha. In defence ,Pandit Nehru took the stand that the article was dealt with by Sardar in his absence and he was not responsible for it. I met Gopalaswami the same evening...I questioned the bona fides of Pandit Nehru's stand. Gopalalswami reaction was one of anger and he said "It is an ill-return to Sardar for the magnanimity he had shown in accepting Panditji's point of view against his better judgement".

## Nehru's gift: An Albatross Around India's Neck

Thus came in Art-370 into the Constitution as a purely temporary and transitional provision. The enactment of this Article was a result of the Congress leadership's political myopia. The Nehruvian thinking on Kashmir did not have the foresight to realize that its policy would hang like an albatross around the country's neck in the coming decades.

Under various Presidential orders issued from time to time under Art.370 various provisions of the Indian Constitution have been made applicable to the State of Jammu & Kashmir, but many provisions still remain inapplicable.

The Constituent Assembly of the States framed its own Constitution. Both the Indian Constitution and the Constitution of the State of Jammu and Kashmir provide that the State of Jammu and Kashmir is an integral part of the Indian Union. Provisions such as Article 356, the jurisdiction of the Supreme Court, the Election Commission and the Comptroller and Auditor General have been applicable to the State.

However, there are vast areas which still remain inapplicable. Article 352 regarding proclamation of Emergency applicable in limited way. The provisions relating to financial emergency are also applicable in a limited way. The Jammu and Kashmir Constitution creates a large number of legal problems, particularly in relation to the right to hold property, the right to citizenship and the right to settlement of persons living in other parts of the country.

The citizens of India are not treated as citizens of Jammu and Kashmir. They have no right of settlement in the State. Even though the Constitution of India recognizes a single citizenship, the people of Jammu and Kashmir have a dual citizenship: They are citizens of India as well as citizens of Jammu and Kashmir. "Non-subjects" cannot hold property in Jammu and Kashmir and even though they may be living there they do not have the right to vote.

## Invalid argument

An argument is regularly advanced that Art-370 is necessary to enable Kashmiris to "preserve their culture and satisfy their regional aspirations" The argument is wholly misconceived. There is no nexus between a law which weakens a nation's integrity and popular regional culture. Has the culture of Bengalis, Tamils and Maharashtrians been adversely affected in the absence of Central laws not being applicable to those regions? On the contrary, has not the changed demographic pattern of these states spread the message of these regional cultures to various corners of the country? Regional aspirations are satisfied by decentralization of power in the hands of democratically elected State governments, local bodies and panchayats .This is never achieved by perpetuating a separatist psyche and alienation.

In the background of these events it is relevant to note as to what political and economic consequences have taken place on account of Art. 370.

This Article has hardly served the people of Jammu and Kashmir. The direct consequence of the special status for Jammu and kashmir has been that persons outside the Kashmir Valley have been prevented from purchasing immovable property in the State. Added to this has been the separatist movement and the insurgency. As a result, industry from other parts of the country has been extremely reluctant to invest in the Kashmir Valley. There is a lurking fear in the minds of industrialists that investment in the Valley will not be a safe proposition. This has directly resulted in absence of job opportunities. The people have to resort to primarily tourism related industry for their survival. There has been some economic progress made by artisans of various kinds. However, even in the area of tourism large scale investment from outside has not been forthcoming the Kashmiri people have thus suffered directly on account of Art.370 in terms of economic progress and job opportunities. Their main dependence has either been on tourism or on opportunities in the Government sector. Education institutions



in the Valley have also been comparatively fewer in number.

### **Who are the beneficiaries? Not the people**

The beneficiaries of Art. 370 were thus not Kashmiris people but ruling political elite and a small vested interest of Kashmiri businessman. Politicians used the bogey of Art. 370 to create a separatist psyche and secure their own political positions. The rich in the Valley prevailed upon the local politicians and did not permit healthy financial legislations in the State. The provisions of beneficial laws such as wealth tax, gift tax and urban land ceiling Act. have been not permitted to operate in the Valley. Whenever the corrupt and tax evaders have been raided ,the bogey of Art. 370 has been used to frustrate the raids.

The political consequences of Article-370 on India as a nation have been disastrous Article-370 has symbolized divisive thinking. It has institutionalized and constitutionalised separatism. It has created a psychological barrier between Kashmir and the rest of India. It has prevented the political and economic integration of Jammu and Kashmir with the rest of the country. It has perpetuated a political order where the State is dependent upon Central grant and subsidies wherein ruling mafia could survive on the strength of favouritism and nepotism.

A direct consequence of non -State subjects not being allowed to purchase property in Kashmir Valley has prevented the citizens of India from settling down in the Valley. Similarly ,except those driven out of the Valley due to insurgency, very few Kashmiris have been ventured out to other parts of the country. Today we see Bengalis , Biharis ,Tamils,etc in large numbers settled in various parts of the country. Except for refugees ,how many Kashmiris do we find? As a result ,there has been no social interaction and the demographic component of the State especially the Valley ,did not become broad based.

Article 370 is the culprit. It has created a sub-national psyche for which the country continues to pay every day. It has resulted in

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the single greatest failure of Indian secularism wherein the entire minority community of the Kashmir Valley was compelled to become refugees in its own country. Their houses were burned, their women raped, their men killed and they continue to suffer in refugee camps. Article 370 has prevented the emergence of an alternative ideological movement in Kashmir which would have resisted this separatist thinking. Besides being a charter for national disintegration Art. 370 represents a dubious example to the other states where similar demands have come up. The country has not recovered from such shocks in Punjab and tremors of this are being felt in the North-East.

Article 370 was perhaps the single greatest Nehruvian blunder. The Partition of India was a result of Jinnah's two nation theory. Paradoxically, Article 370 was a result of a three-nation theory whereby Kashmir became a third sub-nation.

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## 8. PRAJA PARISHAD STRUGGLE AGAINST SEPARATIST AND COMMUNAL POLITICS

The Praja Parishad movement played a key role in opposing the separatist and communal tendencies of Sheikh Abdullah and Nehru's endorsement, even tacit encouragement, in the years following Jammu & Kashmir's accession to India. It campaigned vigorously for the State's complete and total integration with the rest of the Union in the face of stiff resistance from Sheikh Abdullah and his henchmen. Numerous workers and leaders of the Parishad suffered at the hands of the Sheikh's administration and many of them laid down their lives to uphold the unity of the country.

For a better appreciation of the Praja Parishad's role in the State's politics, and its impact on New Delhi's otherwise myopic policies on Jammu & Kashmir, it is important to have a brief look at the period immediately after Maharaja Hari Singh signed the Instrument of Accession. Sheikh Abdullah, who had found an ally in Jawaharlal Nehru, was becoming increasingly 'audacious' by the day. Not content with Nehru's hands-off policy on Jammu & Kashmir, which forced Sardar Patel (much against his wishes) to play a non-participatory role as far as this State was concerned, Sheikh Abdullah began to dream of an independent state of which he would be the sole arbiter.

Sheikh Abdullah embarked on this mission in April 1949 through an interview to Michael Davidson of the Observer in which he spoke on the impropriety of the Maharaja's accession; declared that he wanted to live in peace with both India and Pakistan (and thus distanced himself from the Union); and promoted the concept of an independent, Kashmir which would be underwritten not only, by India and Pakistan, but also the UK, the USA and the UN.

A furious Sardar Patel made his disapproval known in no uncertain terms. Nehru, ever willing to indulge Sheikh Abdullah, was forced to take note of the serious implications of the statement.

What transpired between the two is not known, but Sheikh Abdullah finally disowned the statement on May 18, 1949 and ruled out independence as an option. This was obviously a tactical retreat because he began talking of secession soon after returning from a trip abroad in late 1949.

All this apart, even before Hari Singh has signed the Instrument of Accession which paved the way for Sheikh Abdullah's rise to political power, the National Conference had made clear its anti-Hindu, more specifically anti-Dogra, bias, especially towards the residents of Jammu. His concerns were limited to the Muslims of the Valley. And his contempt was reserved for the Hindus.

The simmering resentment against Sheikh Abdullah's advocacy of self determination, his pronounced anti Dogra bias, the Quit Kashmir movement of 1946 and finally Pakistan's move, to smash and grab Kashmir led to the birth of the Praja Parishad in November 1947. The Parishad's first President, Hari Wazir, died in the Kashmir action as a commissioned officer of the Indian Army. Pandit Prem Nath Dogra took charge of the organisation soon after and the Praja Parishad emerged as the only representative party of Jammu Hindus dedicated to "achieve full integration of Jammu & Kashmir State with India like other acceding states and safeguard the legitimate democratic rights of the people of Jammu from the Communist-dominated anti-Dogra Government of Sheikh Abdullah."

### **Accession and After**

Immediately after he signed the Instrument of Accession Maharaja Hari Singh, on the advice of the Government of India, set up an Emergency Administration headed by Sheikh Abdullah. This was replaced by an interim Government, constituted by the National Conference, and also headed by Sheikh Abdullah. The unique feature of the interim Government was that it ruled by decree, reducing the Maharaja to nothing more than a rubber stamp, and in short time adopted policies which were clearly aimed at Islamisation of the State's polity (through weightage in favour of the Muslims) and its isolation from the mainstream of India's democratic political



culture.

The United Nations intervention in the dispute with, Pakistan, invoked by Nehru misplaced trust in Lord Mountbatten and against the advice of Sardar Patel, and the subsequent Security Council Resolution envisaging a plebiscite under international supervision, almost set aside the State's accession to India. The National Conference lost no time in taking advantage of the resolution to promote the idea that independence for Jammu & Kashmir would be both a solution to the dispute between India and Pakistan as well as provide a mechanism to ensure protection for the Muslim majority of the State from being dominated by the Hindu majority of India.

The National Conference adopted four main strategies to achieve this goal:

- a) It ensured the exclusion of Jammu & Kashmir from the Indian constitution by forcing a separate constitutional relationship with the Union of India through Articles 370.
- b) The Conference leaders abandoned their commitment to secularism and instead shifted their emphasis on consolidating the Muslim identity of the State — in a sense, it was going back to the days of Sheikh Abdullah's identity as the leader of the Muslim Conference;
- c) It insisted on the right of the Constituent Assembly of, Jammu & Kashmir which was instituted in 1951, to determine the future disposition of the State in regard to accession and listed independence as the third option along with the options of acceding to India or Pakistan and,
- d) It began to work surreptitiously to consolidate Muslim opinion in the State against India and to prepare the ground for the Jammu & Kashmir secession.

### **Sheikh's Antecedents Ignored**

Contrary to popular belief foisted upon the people by the Congress (which took its clue from Nehru) and the National Confer-

ence, not to mention other political parties, "Sheikh Abdullah had cherished the dream of an independent Kashmir from the very early stages of his political career which began as a rabble-rouser. He saw himself essentially as the leader of Kashmiri Muslims and it was to promote this view that he founded the Muslim Conference in 1932. He changed the nomenclature of his organisation to National Conference in 1938 not because he wanted to abandon his original platform but because it suited his designs and strategy.

Along with exploiting the religious appeal of his movement, he also exploited "Kashmiriyat" to the hilt and launched agitation after agitation against the Maharaja's regime and thus built up an essentially anti-Dogra Muslim movement in the Valley. Sheikh Abdullah's political game suited British strategic interests in the region and it is not entirely coincidental that the British should have made no effort to hide their sympathies for him and his agitation.

The Quit Kashmir movement which Sheikh Abdullah launched in 1946 should not be seen merely, as an "uprising against a despotic ruler". It had a specific political connotation that is not in consonance with the popular perception. The agitation was aimed against the Hindu ruler of the State who was painted as an alien and aimed at establishing an independent Kashmir. Nehru legitimised this separatist streak of Sheikh Abdullah by excluding Jammu & Kashmir from the purview of the states Ministry and handing it over to the Ministry of foreign Affairs, a decision whose implications are too obvious to be stated.

### **Fallout of Nehru's Flawed Policy**

Having armed himself with unbridled power, Sheikh Abdullah began to ride rough-shod, doing all he could to implement his political designs with the help of his friend in Delhi, Nehru. He was extremely ruthless in suppressing the voice dissent raised by the Praja Parishad, using all the might of the official machinery to let loose a reign of terror. Nehru was fully aware of what was happening in Jammu & Kashmir, but he chose to support Sheikh Abdullah's policies rather than chastise him. So much so, he blamed

the Praja Parishad for provoking his friend and, when cornered on the floor of Parliament, would not hesitate to throw a tantrum and thus escape criticism.

The following is a chronological history of events culminated in the Bharatiya Jana Sangh president, Dr Syama Prasad Mookerjee's martyrdom on June 23, 1953 while being held a prisoner by Sheikh Abdullah.

**Early 1949;** The Praja Parishad was targeted by Sheikh Abdullah's Government for persecution, leading to clashes. Pandit Prem Nath Dogra who had by then emerged as a popular leader with a large following in Jammu region, was arrested. By the summer of that year, the Sheikh's prisons had as many as 294 Parishad workers rotting behind bars without trial. This action of his distressed many Indian leaders, including senior Parliamentarians, although Nehru cheered from the sidelines. Some members of Parliament intervened on their own and succeeded in bringing about a temporary truce. The arrested Parishad workers and leaders were released. A defiant Sheikh Abdullah, to cock a snook at the non-Muslim residents of Jammu & Kashmir began making public statements to belittle Maharaja Hari Singh and the monarchy; hoisted the National conference flag at official functions and atop public buildings, and adopt resolutions espousing autonomy and started advocating independence.

**Sept. - Oct. 1951 :** In the first elections in the State, the National Conference refused to allow the presence of Opposition candidates on the field. Sheikh Abdullah's intention was to use the ballot box to merely legitimise his action of packing the State Constituent Assembly with his Men, that too Muslims, and deny any representation to the Hindus, especially of Jammu. Just before polling, the nomination papers of 42 of the 59 Praja Parishad candidates were rejected on the basis of untenable reasons. This left the Praja Parishad with no other option but to boycott the election which was to set the standards for subsequent fraudulent polls in Jammu & Kashmir. It is ironical that the Parishad should have described the atmosphere as far from ideal, a description that remains

unchanged till date.

**Jan. 15, 1952:** Sheikh Abdullah came to Jammu where he spoke at an official function at Gandhi Memorial College. By then he had institutionalised the practice of hoisting the National Conference flag at all official functions. At the college, too the National Conference flag was hoisted and the students were asked to salute the flag. When they objected the students were severally penalised.

To oppose, the students decided to go for hunger strike to force the government to revoke its inhuman and undemocratic order. Those brave men who went on hunger strike for 38 days in 1952; for the dignity and honour of national flag - Tri colour were Sh. Vishav Pal, Sh. Tilkraj Sharma, Capt. Ram Saroop, Sh. Ved Chahan, Sh. Om Prakash Gupta, Sh. Hari Saran Sharma, Sh. Dwarika Nath Gupta, Sh. Yash Pal Puri, Sh. Ghan Shyam Sahni, Sh. Chaman Lal Gupta, Sh. Hardev Sharma, Sh. Ram Saroop Gupta, Sh. Ghan Chand Sanothra, Sh. Kewal Krishan Sharma, Sh. Ram Mohan Katyal, Sh. Ved Mitter Gandothra, Sh. Pawan Singh, Sh. Hansraj Sharma, Sh. Kuldeep Raj Verna, Sh. Ram Nath Sharma & Sh. Inderjeet.

**Feb. 8, 1952:** A huge procession was taken out in Jammu by the residents to express solidarity with the students. The people spontaneously participated in the protest, sending shock-waves to Sheikh Abdullah's administration which retaliated in the only manner it knew: The Army was called in and a 72-hour curfew imposed. The official action showed that it had Delhi's that is Nehru's, sanction. The students were released but Praja Parishad leaders, including Pandit Dogra, were arrested. With the protest showing no signs of dying, Nehru rushed his confidant, Gopalaswami Ayyangar, in April 1952 to broker a peace. The Parishad leaders were released, but Sheikh Abdullah was incensed: He felt Nehru had let him down and retaliated by taking decisions that further distanced Jammu & Kashmir from the rest of the country.

**April 10, 1952:** In a no-holds barred speech at Ranbir singhhpura, Sheikh Abdullah mocked the Union and expressed



misgivings about the utility of Jammu & Kashmir's continued association with India, accusing "powerful sections" of trying to establish a "Hindu raj". The speech was clearly aimed at rousing communal passions among his constituents both in the Valley and in Jammu. Derisively characterising the demand for the full applicability of the Indian Constitution to Jammu & Kashmir as "unrealistic, childish and savouring on lunacy", he thundered: "Many Kashmiris are apprehensive as to what will happen to them and their position if, for instance, something happens to Pandit Nehru." The cat was out of the bag — Sheikh Abdullah's politics were dependent on Nehru's support.

**April 15, 1952:** Faced with a barrage of criticism" Nehru, -was forced to mildly deplore the "tone" of Sheikh Abdullah's speech. But ever willing to bail his friend out of a sticky situation of his own making, he blamed the Praja Parishad! Emboldened by Nehru's action. Sheikh Abdupallah proceeded with setting up the apparatus of his despotic rule.

**June 10, 1952:** Sheikh Abdullah, without consulting New Delhi and as chairman of the Basic Principles Committee of the Jammu & Kashmir Constituent Assembly, presented an interim report recommending the abolition of monarchy and election of a head of state to be called "Sadar-e-Riyasat". Two days later, the recommendation was unanimously accepted" and the Drafting Committee was asked to submit a proposal within a month. Days - before taking this decision, the Constituent Assembly had unilaterally adopted a new State flag (a minor modification of the National Conference flag), replacing the old standard.

**June; 19,1952:** Alarmed by these decisions which were fast alienating the state from India and leading to the creation of Sheikh Abdullah's fiefdom, the Praja Parishad presented the President with a memorandum, demanding the application of the Indian Constitution to Jammu & Kashmir, jurisdiction of the Supreme Court; extension of Fundamental Rights to the people of the State, and the right to fly the National Tricolour.

**June 26, 1952:** A huge demonstration was organised by

the Praja Parishad outside Parliament to press its demands. Inside the House, Nehru was pilloried by members for his myopic policies and favouring Sheikh Abdullah. N C Chatterjee ridiculed the idea of a "republic within a republic" while Dr. Mookerjee categorically asserted that notwithstanding Nehru's claims to the contrary, Sheikh Abdullah was neither impartial nor secular. A cornered Nehru found the going, tough but as usual, sought to lay the blame elsewhere. He blamed the Maharaja and the UN for the trouble in Jammu & Kashmir and insisted that the State's accession was complete "although it is limited to three subjects".

Once again, Nehru had left an escape clause for his friend who, all this while, was busy scheming on how to assert his independence: First he tried to convince Nehru into allowing him to raise his own militia which would be armed by India but report to him then he refused to hand over communications to the centre; and later he began, using his Trade Agent in Delhi and Bombay as "diplomatic missions". Even as the Praja Parishad was trying to prevent Sheikh Abdullah from fulfilling his dreams, Nehru was striking a deal which would have far-reaching consequences and for which the nation continues to pay a heavy price.

**June 12, 1952:** A delegation of National Conference leaders, headed by the Revenue Minister Mirza Afzal Beg, was invited to Delhi by Nehru, for talks which lasted till June 20. From July 16 to 23, in camera discussions were held between Nehru and Sheikh Abdullah where a concrete shape was given to the latter's plans of creating a "republic within a republic". The plan, known as the Delhi Agreement of 1952 was disclosed by Nehru in Parliament where he gave a short summary on July 24. Full details were provided by Sheikh Abdullah to the Jammu & Kashmir Constituent Assembly on August 11. The highlights of this deal were:

- a. Residuary powers would be vested in the State Government (for the rest of the States, these were vested in the Centre);
- b. Kashmiris would get Indian citizenship but Indians living in other states would not be entitled to citizenship rights in

Jammu & Kashmir. The State legislature was empowered to regulate rights and privileges of permanent residence as the "Government of India (i.e. Nehru) appreciated the need for such a safeguard".

- c. With Sheikh Abdullah not particularly bothered about the fundamentals rights of citizens, he secured the Legislature's discretion on the extent of their applicability.
- d. There would be limited jurisdiction of the Supreme Court. As for civil and criminal matters, its jurisdiction was left open to further discussion.
- e. **Sheikh Abdullah secured the right to fly the State flag alongside the national Tricolour.**
- f. The head of state would be recommended by the Legislature and recognised by the President.
- g. Sheikh Abdullah refused financial integration and this was granted.
- h. Article-352 would have limited applicability : Emergency could be declared in Jammu & Kashmir on grounds of internal disturbances only with the concurrence and approval of the State Government.

A triumphant Sheikh Abdullah flaunted the deal as a slap in the face of the Praja Parishad and the non-Muslim residents of the State. He began demolishing whatever remained of the system that was not to his liking:

**Aug 11, 1952 :** Sheikh Abdulla warned : "I would like to make it clear that any suggestions of altering arbitrarily this basis of our relationship with, India would not only constitute a breach of the spirit and letter of the Constitution but it might have serious consequences..."

**Aug 21, 1952:** The Jammu & Kashmir Constituent Assembly adopted a resolution abolishing monarchy and accepting the concept of an elected head of state. On November 12, a constitutional amendment was incorporated, substituting Sadar-e-Riyasat for ruler.

By now the Praja Parishad workers were seething with anger. They decided to battle it out with Sheikh Abdullah's National Conference.

**Nov 24, 1952 :** A public reception in honour of Yuvraj Karan singh was boycotted by the people of Jammu. Festoons were pulled down, arches destroyed and all signs of official celebration removed.

**Nov 26, 1952 :** Pandit Dogra was arrested with 14 other leaders, triggering the movment against "ek desh mein do pradhan, do nishan, do vidhan". The Praja Parishand supplemented its demand with evidence of Sheikh Abdullah's communal politics as borne out by his policies of breaking up Hindu majority districts for electoal purpose, making Urdu a compulsory, subject, filling up of important posts with Muslims, sacrificing the economic interests of the non-Muslims and rigging elections to deny Hindus a legitimate voice.

By the closing days of the year, the agitation was no longer limited to Jammu. In state after state, the Bharatiya Jana Sangh, under the leadership of Dr. Mookerjee, rallied people to the cause of Protecting Jammu & Kashmir from the evil designs of the Sheikh Abdullah-Nehru duo. The support was spontaneous and overwhelming. .

### **Historic Satyagraha**

In Jammu, the Praja Parishad with Pandit Dogra at its helm, launched a historic satyagraha for full and final accession of the state to India, abrogation of Article 370, application of the, Indian Constitution to the State and the abolition of custom duty and the permit system (a permit was required to enter or leave the state). Pandit Dogra and Shyam Lal Sharma offered the first satyagraha along with 200 volunteers. This unleashed a powerful movement all over Jammu region whose ringing slogan was, "Ek desh mein do vidhan, do nishan, do pradhan nahin chalengey, nahin chalengey". More than 10,000 volunteers offered peaceful satyagraha but instead of listening to their demand, Nehru turned a blind eye to the repression that was unleashed by Sheikh Abdullah



against the Parishad.

### **Sheikh Abdullah's Atrocities**

The intensity of the Praja Parishad's movement had a deep and stirring impact on every family in the region. People joined the agitation spontaneously. Sheikh Abdullah, taken aback by the agitation, responded by resorting to ruthless suppression of dissent. Fifteen people were shot dead by his police while hoisting the National Tricolour on Government buildings. Hundreds of people were injured and thousands put behind bars. Bullets, lathis and a systematic campaign of looting, harassing and raping of woman by National Conference workers was the order of the day. Individuals were humiliated by both officials and party workers in myriad ways. All this failed to dampen the spirit of the nationalists. Satyagrahis, carrying the Tricolour, a copy of the Indian Constitution and a photograph of Rajendra Prasad (then President) continued to court arrest.

Mela Ram was the first victim of police firing at Chamb. This was followed by the martyrdom of Krishah Lal Bali, Baba Ram ji Dass and Beli Ram at Sunderbani. Behari Lal and Bikram Singh were shot dead at Hiranagar. Their bodies were not handed over to their relatives. Instead, they were burned after being doused with kerosene. Nanak Chand, Basant Ram, Baldev Singh, Sain Singh, Waryam Singh and Trilok Singh were shot dead at Jaurian. Devi Saran, Shivaji and Bhagwan Dass succumbed to bullet injuries at Ramban in Doda district.

But all was not lost and the voice of protest raised by the Praja Parishad against the despotism of Sheikh Abdullah and his separatist policies was not ignored by nationalists in Delhi represented by the Bharatiya Jana Sangh. Dr Shyama Prasad Mukhrejee lent his immediate support to the Praja Parishad's struggle and the Jana Sangh took up the issue at the national level, launching one of the most emotive nationalist campaigns in post-independent India.

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## 9. DR. SYAMA PRASAD MOOKERJEE'S ROLE AND HIS MARTYRDOM

Sardar Patel, who had spent the last years of his life toiling day and night to create the Union of India and coping with Nehru's quirks, died on December 15, 1950. This left Nehru in sole command of India's destiny. More importantly, there was nobody to ask uncomfortable questions about his handling of Jammu & Kashmir affairs. But Nehru had to reckon with Dr. Syama Prasad Mookerjee, President of the Bharatiya Jana Sangh who took it upon himself to steer the polity on the nationalist course. By the time the new Parliament was convened, as *The Times of India* commented, "the mantle of Sardar Patel had fallen on Dr. Syama Prasad Mookerjee". He did not shy away from accepting the responsibility.

Responding to the President's address to the new Parliament on May 21, 1952, he referred to Sheikh Abdullah's separatist politics which had begun to take shape by that time and said that India's unity and integrity were at stake. Nehru interrupted to inform Parliament, "I know more about Kashmir than Dr Mookerjee." Undaunted, Dr Mookerjee pressed with his point: "I would like to know, are Kashmiris Indian first and Kashmiris next or they are Kashmiris first and Indian next, or they are Kashmiris first, second and third and not Indian at all. That is a very important point we have to settle."

Dr Mookerjee had hit the nail on the head. He had succinctly presented the problem and sought a clear answer. Nehru, of course, responded with signing a deal with Sheikh Abdullah in June-July that year, virtually legitimising the separatist and communal politics of the National Conference and formalising Jammu & Kashmir's "special status". The deal came as a body blow against the non-muslims of the State who had launched an agitation against Sheikh Abdullah under the leadership of the Praja Parishad.

The import of the deal was lost on the Congress and the other Opposition parties, but Dr Mookerjee, who had by then been in touch with the Praja Parishad and briefed by Pandit Prem Nath Dogra, saw through the game.

*The following are the important milestones then onwards in the Jana Sangh's campaign to save Jammu & Kashmir from separatist and secessionist designs, a campaign initiated by Dr. Mookerjee and kept alive by the BJP :-*

June 14, 1952 : Dr. Mookerjee gets a resolution passed by the working committee of the BJS, emphasizing that Jammu & Kashmir is an integral part of India and declaring that the decision of the State Constituent Assembly concerning an elected President and a separate flag coupled with the recommendations of its Basic Principles Committee that Kashmir will be an autonomous republic are in clear violation of India's, sovereignty and the spirit of India's Constitution. The (Working) Committee takes a serious view of this development and wants to remind the people and the Government of India that the Cabinet Mission scheme of 1945 envisaging a, weak centre with only three subjects was opposed by the Congress and a. large section of Indian opinion as being inimical to, India's unity and interests. The fissiparous tendencies of the Muslim League, however, succeeded, in dividing India leading to disastrous consequences. To allow the Jammu & Kashmir State to proceed along the same path now looks like permitting history to repeat itself. It might mean a fresh call to disruptive elements in-India to break its unity and integrity-which has been achieved at such tremendous cost." The resolution also called upon the people to observe June 29, 1952 as Kashmir Day in support of the BJS stand.

**June 26, 1952:** Dr Mookerjee speaks in the Lok Sabha on the question of Jammu & Kashmir having a separate flag, an elected Head of State (Sadar-e-Riyasat) and Article 370 on the basis of which Sheikh Abdullah wanted a separate Constituion for the State. "You cannot have divided loyalty. Sheikh Abdullah has said, We will treat both flags equally." You cannot do it. It is not a question

of fifty-fifty. It is not a question of parity, It is a question of using one flag for the whole of India. India that includes Kashmir. There is no question of having a separate republic of Kashmir having a separate flag." He referred to the incongruity of Art. 370 and provided details of the suppression of civil rights, elimination of Hindi, division of Jammu along communal lines, expropriation of Dharamarth property and funds, communalism in services and discrimination against Jammu and the "iron curtain" which Sheikh Abdullah has drawn around the State. "If you just want to play with the wind and say. We are helpless and let Sheikh Abdullah do what he likes, then Kashmir will be lost. I say this with great deliberation that Kashmir will be lost:-

**July 24, 1952 :** Nehru unveils in Parliament the deal he has struck with Sheikh Abdullah which marked a victory for the latter's politics.

**Aug 7, 1952:** Dr Mookerjee attacks the agreement in the Lok Sabha and warns Nehru, "What you are going to do may lead to the Balkanisation of India, may lead to the strengthening of the hands of those who do not believe that India is a nation but a combination of separate nationalities," He went on to ask the Prime Minister, "Was Sheikh Abdullah not a party to the constitution of India? Did he not accept this constitution in relation to the rest of India, including 497 states? If it is good enough for all of them, why should it not be good enough for him in Kashmir?" Nehru vaguely referred to the "special status" of the State, condemned the Praja Parishad and blamed everybody except the real culprits.

**Aug 9-10, 1952:** The Praja Parishad organises a convention in Jammu to explain to the people the disastrous consequences of the 'Delhi Agreement'. Pandit Dogra invites Dr. Mookerjee to attend. On his way to Jammu, Dr Mookerjee responds to surging crowds at every railway station with the slogan, "Hum Vidhan lengey ya balidan dengey". On reaching Jammu, he is invited by Sheikh Abdullah for talks.

**Aug 10, 1952:** Dr. Mookerjee has a six-hour meeting with Sheikh Abdullah, also attended by his deputy, Bakshi Ghulam



Mohammad. Sheikh Abdullah tells Dr. Mookerjee that his actions are dictated by political compulsions and the need to keep fundamentalist Muslims in check. At one point, he raises his voice. Dr. Mookerjee responded by telling Sheikh Abdullah that his policies and speeches make him look and sound like Jinnah.

**Aug 11, 1952:** Dr. Mookerjee tells Pandit Dogra and other Parishad leaders not to precipitate action at the moment and instead educate and inform the people about the dangerous policies of Sheikh Abdullah. He assures full support to the Praja Parishad if Sheikh Abdullah persists with his policies. Clearly he wanted to prevent turmoil in the State. On his return, he has a lengthy talk with Nehru and asks him to give a hearing to Pandit Dogra, and listen to the grievances of the non-Muslims of Jammu & Kashmir. Nehru contemptuously rejects the suggestion. In Srinagar, Sheikh Abdullah moves swiftly to put his plans into action.

**Nov 8, 1952:** Pandit Dogra meets Dr. Mookerjee at Jalandhar where he had gone for the Punjab Provincial Jana Sangh conference, and briefs him about the fast deteriorating situation in the State. Dr. Mookerjee asks Pandit Dogra to take all issues into consideration before launching an agitation and assures him full support of the Jana- Sangh to mobilise public opinion in favour of the Praja Parishad.

**Nov 17, 1952 :** Sheikh Abdullah plans to hoist the new "State flag", a minor modification of the National Conference flag, on the State Secretariat. Praja Parishad responds by saying that only the Tricolour shall fly in Jammu. Sheikh Abdullah, taken aback postpones the hoisting and seeks Nehru's help. Nehru responds by rushing armed police to his friends's rescue. With these moves, Sheikh Abdullah cracks down on Praja Parishad.

**Nov. 26, 1952 :** Pandit Dogra and Shyam Lal Sharma, organising secretary of the Praja Parishad, are arrested from main square of Jammu city for hoisting the National Tricolour. The arrests and subsequent atrocities on Parishad workers and all nationalist people of Jammu marked, the beginning of the historic satyagraha against "ek desh mein do nishan, ek desh mein do Vidhan, ek desh

mein do pradhan”.

**Dec 14, 1952:** Jana Sangh observes Jammu & Kashmir Day, to express solidarity with the Praja Parishad agitation. There is tremendous and emotive response to the call all over the country. In the last week of December the first plenary session of the BJS is held in Kanpur after Dr. Mookerjee re-election as party president. In his address to the session, Dr. Mookerjee says, “Even at this late stage, I would appeal to Mr. Nehru and Sheikh Abdullah to cry a halt and not to stand on false prestige. They must open negotiations with the Parishad leaders and arrive at an settlement which, will be fair and just to all, Meanwhile, our active sympathies must be extended to all those in Jammu who are facing bravely the wrath of the authorities and silently suffeting for a noble cause.” Exuberant members demand that the BJS serve an ultimatum to Nehru’s Government to act or face the ‘party’s wrath.’ Dr. Mookerjee suggests trying to bring about a peaceful settlement. A resolution is adopted, authorising Dr. Mookerjee to write to Nehru and Sheikh Abdullah and explore the possibility of a solution.

**Jan 9, 1953:** Dr. Mookerjee writes to Nehru: “... I know that you do not see eye to eye with many of us on this (Jammu & Kashmir) issue. Yet I am writing to you in the hope that you will keep an open mind and try to appreciate the viewpoint of those who may differ from you on this matter. It is vitally important that the circumstances that have led to the present movement should be impartially reviewed and effort made to arrive at a speedy and peaceful settlement which will be fair and just to all concerned.... Repeated efforts were made by Praja Parishad leaders and others to have a amicable settlement by constitutional means. Representations were sent to Dr. Rajendra Prasad, to yourself, to the Minister of states and to Sheikh Abdullah... Apparently the authorities concerned paid no heed to such manifestations of public opinion and even treated them with contempt. On the other hand, some of the matters regarding which accute controversy had been raised were proceeded with by the authorities themselves with undue haste, thus precipitating a crisis... It is high time that both you and

Sheikh Abdullah should realise that this movement will not be suppressed by force or repression... The problem of Jammu & Kashmir should not be treated as a party issue. It is a national problem and every effort should be made to present a united front... The State of Jammu & Kashmir is a part of the Indian Union and as such it is perfectly open to the rest of the people of India to interest themselves in the affairs of the State... (The) people of Jammu are not prepared to sever their connection with India under any circumstances, plebiscite or no plebiscite. The greater the delay in having this moot question (of accession) decided once for all the greater will be complications and possibilities of unrest... Once it is settled that a final decision has been taken on the question of accession, two matters will have to be taken up. One relates to recovery of one-third territory of Jammu & Kashmir which is now in occupation of Pakistan. How are we going to get this back? You have always evaded this question. The time has come when we should know what exactly you propose to do about this matter. It will, be a sort of national disgrace and humiliation if we fail to regain this lost portion of territory... The other question relates to the extent of accession of Jammu & Kashmir State with India. If the people of Jammu demand that the accession should be of the same lines as in the case of other states, they don't say anything that is arbitrary or extraordinary.

"This is their natural wish and they are guided by patriotic and national motives..." A copy of this letter is sent to Sheikh Abdullah with a note: "The issues at stake affect not only your state but the whole of India and I hope you will move before the situation further deteriorates."

**Jan 10, 1953:** Nehru replies to Dr. Mookerjee, ".... I am quite prepared and I am sure that Sheikh Abdullah is prepared, to consider any grievances of the Jammu people and try to rectify them where, this is possible. But the demands of the Praja Parishad are basic constitutional issues which cannot be given effect to for obvious reasons. They are trying to decide a very difficult and complicated constitutional question by methods of war. It does not

require much thought to demonstrate that this method cannot yield those results, whatever the merits may be..." Soon after this, Nehru and Sheikh Abdulla launched a vituperative campaign against the Praja Parishad and the BJS.

**Feb 3, 1953:** Dr. Mookerjee writes to Nehru, "I have no desire to carry on a protracted correspondence with you in this matter. But the issues involved are so serious that I am taking the liberty of writing to you again. One common feature of (your) speeches has been an abundance of abuses and vituperation which you have poured forth on those who differ from you. You have ascribed to us all sorts of base motives and have even dubbed us as betrayers of the country's interests. I have no desire to emulate you in this respect.. I have read your speeches and those of Sheikh Abdullah with considerable care, but unfortunately they evade the real issues,..." He then made the following points :

1. "The Parishad has considerable popular backing. As one who knows mass mind, you will realise that no popular movement can be crushed by force.
2. The first question raised is when and how will the Accession of the State of Jammu & Kashmir, to India be finally settled? My own suggestion has been that the Legislative Assembly of Jammu & Kashmir, which has been elected on adult franchise, may accept a resolution accepting final accession and the matter may be considered as irrevocably decided so far as India is concerned. Please be specific on this issue and let us know that if this suggestion is not acceptable what is your alternative proposal for finalising accession.
3. We do not want partition of the State. But you seem to forget that Jammu & Kashmir has already been partitioned by Pakistan and the real question is whether you and Sheikh Abdullah propose to acquiesce, in this partition. You have, always evaded this question. Please do not side track the issue and let the public of India know when if at all, we are going to get back this part of our cherished territory.



4. The third point relates to the subjects in relation to which Accession will take place. The Praja Parishad wants, and we whole heartedly agree, that the entire State of Jammu & Kashmir should be governed in accordance with the same Constitution that applies to the rest of India. Is there anything communal or reactionary or anti-national about it? It is amazing, how the move of separatism pursued by Sheikh Abdullah and his colleagues is being applauded by you as national and patriotic; and the genuine desire on the part of Praja Parishad to secure the fundamental unity and integrity of India and to be governed as common Indian citizens is being dubbed as treacherous conduct. Your letter and your speeches give no satisfactory answer to these basic points raised by the Praja Parishad.
5. There are many grievances of the people of Jammu regarding internal administration. Delay in dealing with them is intensifying the agitation.
6. It is undoubtedly true that we should do nothing which may weaken India's, Position or strengthen the hand of our enemy. This aspect you must bear in mind as Prime Minister of India... He sends a copy of this letter to Sheikh Abdullah, adding a note, "It is tragic you completely misunderstand those who are differing from you and are proceeding in a manner which may be disastrous to India including the State of Jammu & Kashmir. I still hope you will be able to rise equal to the occasion and find a way for peaceful settlement."

**Feb, 4, 1953:** Sheikh Abdullah replies to Dr. Mookerjee's letter from Jammu Tawi, enclosing pamphlets issued by his Government to justify its policies. He emphasises on Jammu & Kashmir's "special status" apropos Art 370.

**Feb 5, 1953:** Nehru replies to Dr Mookerjee, "... According to my thinking the agitation of the Praja Parishad is not only communal but is supported by communal and narrow-minded elements in India. Believing this as I do, the only course that I can

follow is to resist this utterly misconceived agitation. That is our Government's opinion and they propose to adhere to it and pursue this policy..... If indeed the agitation continues it will be for us to consider what other further steps Government can take in the matter..." Nehru followed this up by ordering the preventive arrest of BJS. leaders on the eve of the Party's meeting in Delhi.

**Feb 8, 1953:** Dr. Mookerjee writes to Nehru, "... Apparently you are not in a mood even to understand the views of those who differ from you... I and many others honestly feel that demand on the part of a section of our countrymen living in the State of Jammu & Kashmir to see that their State is finally integrated with India and is governed according to the Constitution of free India is not an unpatriotic or disintegrating or communal move... Let me assure you we are ready to face your wrath and fury.... You will forgive me if I fail to appreciate your repeated reference to possible international complications as a result of Jammu movement. No one today will claim that your handling of the Kashmir problem has enhanced our international prestige or has won for us wide international support and sympathy. On the other hand, your policy in this behalf has added to complications both at home and abroad. Statesmanship require that you should... instead of being haunted by false internationalism, firmly create conditions for national solidarity..."

**Feb 10, 1953:** Nehru replies to Dr. Mookerjee, "... I have no doubt that you wish well to India, but the fact remains that our conceptions of what is well for India appear to differ. Because of this 'our past lives have moved largely in different spheres... I would suggest that you exercise your influence to put an end to this agitation in Jammu."

**Feb 12, 1953:** Dr Mookerjee writes to Nehru, "... The only way this can be done is to make the sponsors of this movement appreciate, that you and Sheikh Abdullah are prepared to discuss all matters with them with an open mind and arrive at decisions which would meet their legitimate demands... The points for consideration are as follows :

## ARTICLE 370- A THORN

1. Finality of Accession to India through a resolution to be adopted by the Constituent Assembly of the state.
2. Adoption by the State of the provisions of Indian Constitution regarding such matters as Fundamental Rights, citizenship, “financial ‘integration, abolition of Customs duty, Supreme Court, Emergency powers of the President and conduct of elections. These are to be implemented within a stated time.
3. In respect of the rest of the Indian Constitution, Sheikh Abdullah should indicate what deviations, if any, the desires to be made. These are to be considered on their merits.
4. Jammu & Constitution as finally agreed will be a part of the Indian Constitution.
5. Provincial autonomy to Jammu and Ladakh without changes of boundary.
6. Acceptance of the supermacy of Indian Flag.
7. Policy regarding liberation and occupation of the Pakistan held territory.
8. Commission of Enquiry with a majority of judges from outside the State to go into all grievances including Dharmartha Trust, excesses committed by police and compensation to the families of sufferers, especially who have been shot dead.
9. Restoration of pensions, properties etc. to people against whom confiscation order might have been passed.

**Feb. 12, 1953:** Nehru sends his reply, arguing that the only solution lay in autonomy for Jammu & Kashmir. “I am sure that the right course is for this agitation to be withdrawn.

**Feb. 12, 1953:** Dr Mookerjee writes to Nehru, who had pleaded helplessness because of “ongoing talks in Geneva”, “... What you and Sheikh Abdullah have to decide first is whether you are willing to talk to the Praja Parishad leaders. I would implore you to do so...”

**Feb. 13, 1953 :** Dr Mookerjee realises the futility of

correspondence with Nehru writes to Sheikh Abdullah... "It is not safe to base one's present attitude towards grave political issues solely on past relationship with one's opponent... You yourself started as a leader of a communal party. And yet it would be highly improper to judge your present aims by making elaborate researches into your past history starting from Aligarh... You are now developing a three-nation theory, the third being the Kashmiri nation. These are dangerous symptoms and are not good for your State or for the whole of India. I would beg you not stand on false prestige but to agree to discuss all disputes with the leaders of the Praja Parishad even at this late stage.'

**Feb. 15, 1953:** Nehru, briefed by Sheikh Abdullah, replies to Dr. Mookerjee, "... Subject to our holding fast to the principles which have guided us, and the policies which we have pursued, the Government will gladly do, all in its power, to bring about normally and peaceful cooperation in the Jammu & Kashmir State. But this agitation was not of our seeking and the first step should be to withdraw the agitation completely...

**Feb. 17, 1953 :** Dr Mookerjee writes to Nehru yet again, "...After considering the matter fully and also your determination that the movement must be withdrawn completely as a first step, may I suggest the following procedure for your consideration :

1. The Movement is withdrawn.
2. Order for release of prisoners is given and there will be no victimisation.
3. You and Sheikh Abdullah call a conference say, after a fortnight, where all political and constitutional matter are discussed with an open mind.
4. Both parties reiterate that the unity of the State of J & K will be maintained and that the principle of autonomy will apply to the province of Jammu as a whole and of course also to Ladakh and Kashmir Valley.
5. The new Constitution to come into force as soon as possible and



elections to take place within, say, six months.

6. The question of flag is to be clarified and the Indian flag should be in use every day just as is done in all other parts of India.
7. Implementation of the July Agreement will be made at the next session of Jammu & Kashmir Constituent Assembly after the issues left vague have been properly clarified. In respect of Fundamental Rights, citizenship, Supreme Court, President's powers, financial integration and conduct of elections provisions of the Indian Constitution will apply. Exception however may be made with regard to condition for acquisition of land...
8. The terms of reference of the Commission of Enquiry will be widened and all grievances will be examined by it.
9. The Commission now includes four persons, Chief Justice, Accountant General, chief Conservator of Forests and the Revenue Commissioner. The last three gentlemen are administrative officers under J & K Government and they can hardly inspire confidence. The Commission should be reconstituted with two judges from India and Chief Justice of J & K so that its impartiality and representative character may not be questioned.
10. Regarding, finality of Accession and other political matters, the conference will consider these points from every aspect and agreement ought to be reached which will be to the best interest of India Including J & K."

**Nehru did not bother to reply to this letter.**

**Feb. 18, 1953:** Sheikh Abdullah writes to Dr. Mookerjee, "I will frankly state that the present leadership of the Praja Parishad is avowedly disruptive and communal in its aim and purpose. Consequently, it will not be possible for us to have any common meeting ground with them." Dr. Mookerjee - decided to make a last effort by writing to Sheikh Abdullah.

**Feb. 23, 1953 :** Dr. Mookerjee writes to Sheikh Abdullah, I

have been unable to understand your refusal even to talk' to the representatives of the Praja Parishad. If you... feel to determined to crush a particular political party that may be opposing you, and adopt force and other, methods for the purpose, then you ceased to be a democratic leader. You then become a fascist. But even then your success is doubtful, for in all such cases history has proved that the movement goes underground and ultimately the mighty dictator loses the battle of true freedom..."

**March 5, 1953:** BJS observes Jammu & Kashmir day all over the country. Once again it receives tremendous response. Earlier' the BJS-Mahasabha had captured three of the four seats to the Delhi Assembly to which by-elections had been held on the strength of its Kashmir campaign. Nehru first imposed a ban on public meetings. But gauging the public mood, lifted it just before the March 5 meeting in Delhi where it was decided that Dr. Mookerjee, N C chatterjee and Nand Lal Shastri would lead a procession the next day from the railway station, carrying the ashes of victims of Sheikh Abdullah's atrocities.

**March 6, 1953:** Dr. Mookerjee and his colleagues are arrested at Chandni Chowk for violating prohibitory orders, provoking widespread protests and consolidated the party's Kashmir campaign.

**March 11, 1953:** Dr. Mookerjee and others released after Babu Ram Narain' Singh, MP, files a habeas corpus petition. Dr. Mookerjee tours several states and is greeted by full throated support for BJS campaign on Kashmir. Decides to visit Jammu & Kashmir without a permit.

**May 8, 1953:** Dr. Mookerjee boards train to Jammu from Delhi. He is accompanied by Vaidya Guru Datt, Atal Behari Vajpayee, Tek Chand and Balraj Madhok. He issues Press statement, saying, "The satyagraha, movement has been continuing in Jammu for nearly six months leading to the arrest of about 2,500 persons and to the killing of more than 30 satyagrahis by police firing. In Delhi and Punjab the movement has been going on for more than two months and has led to the arrest of more than 1,700 satyagrahis..."

(A) large number of satyagrahis are pouring into the Capital of India from various parts of the country giving the movement an all India character..... In Jammu, in spite of the iron curtain, people have not succumbed to fear and are ready to face the wrath and fury of the authorities whose repressive measures continue unabated... It is strange.., that one cannot enter the State without a previous permit from the Government of India... entry is barred to those who think or act in terms of Indian unity and nationhood... My object of going to Jammu is solely to acquaint myself with what exactly had happened there and the present state of affairs' ...

From Ambala he sent a telegram to Sheikh Abdullah: "I am proceeding to Jammu. My object in going there is to study situation myself and to explore the possibilities of creating conditions leading to peaceful settlement. I will like to see you also if possible." Sheikh Abdullah replied : "Thanks for your telegram. I am afraid your proposed, visit to the State at the present juncture inopportune and will not serve any useful purpose."

**May 11, 1953:** At Pathankot Dr. Mookerjee is informed by Deputy Commissioner of Gurdaspur that the Government has allowed him to proceed without permit and "though no limit has been put on the number of companions you can take with you; I will advise you to take only a few." Dr. Mookerjee reaches Madhopur check post on the Ravi bridge at 4 pm. The jeep carrying him and others is stopped half-way across the bridge by Kashmir policemen and Dr. Mookerjee is handed an order of the Chief Secretary of the State dated May' 10, 1953, banning his entry into the State. When Dr Mookerjee insisted on going to Jammu he was given an order of arrest under the State's Public Safety Act issued by the Inspector General of Jammu & Kashmir police and dated May 11 ,1953, stating that Dr. Mookerjee "has acted, is acting and is about to act in a manner prejudicial to public safety and peace." Dr. Mookerjee got down from the jeep along with Vaidya Guru Datt and Tek Chand. They were put under arrest Before being taken away. Dr. Mookerjee told. his companions, "Go tell our countrymen that I have entered Jammu & Kashmir State, though as a prisoner .."

**May 12, 1953:** Dr. Mookerjee and his two companions are imprisoned in a small cottage near Nishat Garden which is designated a sub-jail. The sub-jail is not equipped with any facilities, not even a telephone.

**May 13, 1953:** N. C. Chatterjee demands an explanation from Nehru as to how Dr. Mookerjee could have been arrested after being allowed to proceed by the Deputy Commissioner of Gurdaspur. Nehru denies that the Deputy Commissioner met Dr. Mookerjee.

**June 18, 1953:** Barrister U. M. Trivedi, who had gone to Srinagar to argue his habeas corpus at Kashmir High Court to secure his release, met Dr. Mookerjee for three hours. He found him weak and cheerless. The next day, Pandit Dogra, who was taken from Jammu to Srinagar to meet him, also found Dr. Mookerjee in a poor state.

**June 19-20, 1953:** On the night of June 19, Dr. Mookerjee developed a pain in the chest and high fever. On June 20, Dr. Ali Mohammed, diagnoses it as dry pleurisy and prescribes streptomycin injections despite Dr. Mookerjee informing him that he had been advised by his family physician to avoid this drug as it did not suit him. Vaidya Guru Datt was to say later that Dr. Mookerjee that day requested the Superintendent of Jail to inform his relatives about his illness. No, such information was conveyed.

**June 21, 1953:** A sub-assistant surgeon who was the jail doctor pays a cursory visit. Dr. Mookerjee's chest pain becomes intense and his fever increases. He remains untreated. He is unable to talk to Pandit Dogra who had been fetched from Jammu to discuss the possibility of ending the agitation as by then Sheikh Abdullah had begun to face dissension in his own ranks. Bakshi Ghulam Mohammad wanted a settlement with the Praja Parishad.

**June 22, 1953:** Dr. Mookerjee suffers a severe heart attack at 4 AM. His temperature plummets and he begins to perspire. The Jail Superintendent is requested to fetch a doctor. Dr. Ali Mohammed arrives at 7:30 AM and suggests, Dr. Mookerjee's removal to State



Nursing Home. The two co-detenus want to accompany him, but are denied permission. Permission to remove Dr. Mookerjee to hospital is secured only at 11.30 AM and he is taken in a taxi. The hospital is at a distance of 10 miles and he is kept in a room on the first floor. Trivedi meets him at 5.30 PM and is confident that he will be able to secure a release order the next day.

**June 23, 1953:** At 3.45 AM Trivedi is picked up from his hotel. Vaidya Guru Datt and Tek Chand are picked up from the sub-jail. They are taken to the hospital where they are informed that Dr. Mookerjee died at 3.40 AM. Witnesses claim later that as he lay gasping, Dr. Mookerjee was denied oxygen.

Only judicial enquiry could decide wheather he died or was murdered, which was never conducted inspite of the fact that Dr. Mookerjee, the leader of the opposition in parliament died in mysterious circumstances in Srinagar jail.

In his death Dr. Mookerjee secured from Nehru what had been denied to him in life. A storm of protest blew across the country and public anger kept on mounting. Nehru found himself increasingly being cornered, even by his own colleagues in Government. Sheikh Abdullah, meanwhile, prepared for his final putsch. Finally, Nehru was left, with no further defence of his friend. On Aug 9, 1953, Sheikh Abdullah was dismissed from office and jailed. Nehru had to acknowledge at that Sheikh Abdullah was indulging in anti-national activities and working against the country's interests. The Praja Parishad's demands, too, had to be conceded, but on this front success was partial.

The biggest success, however, was that Sheikh Abdullah could not fulfil his dream of breaking free India. And Nehru was prevented, from helping his friend fulfil this dream. The man who claimed to "know more about Kashmir" than others had been humbled.

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## 10. HOW NEW DELHI SPOILED INDIA'S CASE ON J&K

### Flawed from the beginning

Jawaharlal Nehru's family being resident of Kashmir and his association with Sheikh Abdullah before 1947, perceived himself as the sole policy-maker as far as Jammu & Kashmir was concerned. In retrospect, it appears that he was keen that the State should not be integrated in the manner in which the other acceding states were integrated in the, Indian Union. For him, Jammu & Kashmir was a special State deserving a special status. So much so, he excluded Jammu & Kashmir from the purview of the States Ministry headed by Sardar Vallabhbhai Patel and put it under the care of the Foreign Ministry. Gopalaswami Ayyangar, a close aide of Nehru, was asked to handle Kashmir affairs on a day to day basis. Sardar Patel tried to intercede but his sage advice was ignored. Nehru was more keen to listen to the advice of Lord Louis Mountbatten whose interests in Jammu & Kashmir were not favourably disposed towards India. Great Britain's last Viceroy and India's first Governor-General ardently believed that Jammu & Kashmir should have gone to Pakistan. Failing that, he ensured that the State's Accession to India would become a subject of international dispute by taking the issue to the UN.

In fact, Mountbatten (in consultation with Nehru who, in turn, was in touch with Shiekh Abdullah) converted what was an unconditional Accession into a conditional union with India, subject to a plebiscite. Since it was his prerogative to acknowledge the Instrument of Accession (similar to that signed by the rulers of other princely states) signed by Maharaja Hari Singh, he added a rider to it:

".....it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's Accession should be settled by a reference

to the people”.

This became the cornerstone of Nehru's subsequent policies on Jammu & Kashmir. And this became the rallying point of separatism in the State... Nehru took it a step further by first offering a plebiscite under UN auspices and later taking the issue to the UN. Both these actions were taken, in consultation with Mountbatten and against the express advise of Sardar Patel who was to ruefully comment later during a conversation with his secretary, V Shanker : "Don't you see we have two UN experts --- one the PM and the other Lord Mountbatten --- and I have to steer my way between them."

Why did Nehru needlessly take the issue of Jammu & Kashmir's Accession to the UN? An answer is provided by V Shankar in his book, 'My Reminiscences of Sardar Patel'.

"(An) event had occur red which was to have a more profound effect on the fortunes of the State and the country than these military events or incidents (the tribals raids organised by Pakistan). Ever since Accession had been accepted with a rider inserted at Lord Mountbatten's insistence to the effect that the accession would be tested, by the wishes of the people of the State, Lord Mountbatten had been at pains to ensure that our action was not misunderstood by the UN and the constituent powers, big or small. Pandit Nehru, with his passion for understanding among foreign nations, was very sympathetic to the approach but Sardar had many mental reservations. He was for utilising' the opportunity to finalise the accession without much ado or any further formalities. Lord Mountbatten persuaded Pandit Nehru to make a broadcast in which he was to announce that the Accession would be subject to a plebiscite under the UN auspices." Knowing fully well Sardar's opposition to such a move, Nehru sent him the script of the broadcast at the last minute. Sardar tried io contact Nehru to persuade, him into dropping the reference to the UN. But by then 'it was too late. Nehru had his way with Jammu & Kashmir to the detriment of the nation. The, upshot of his short-sighted action: A Security Council Resolution envisaging a plebiscite to determine the future of Jammu

& Kashmir and a UN brokered "truce" which came into effect from Jan 1, 1949 Leaving a third of the State under the occupation of Pakistan.

This was in October 1947. Having committed the initial folly, Nehru made it worse by filing a complaint with the UN Security Council. On January 1 1948 the complaint was soon converted into an advantage by Pakistan and instead of being on the offensive, India was soon reduced to defending its position. The situation remains unchanged.

### **Nehru's commitments that prevented integration**

The following are some excerpts from Nehru's telegrams speeches and letters:

Gratuitous telegram to British Prime Minister Clement Attlee on Oct 26, 1947 : I should like to make it clear that question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view, which we have repeatedly made public, is that the question of Accession in any disputed territory or state must be decided in accordance with the wishes of people..."

Telegram to Pakistan Prime Minister Liaquat Ali Khan on Oct 27, 1947 : "I should like to make it clear that the question of aiding Kashmir .... is not designed in any way to influence the State to accede to India. Our view, which wa have repeatedly made public, is that the question of Accession in any disputed territory or State must be decided in accordance with the wishes of people..." On Oct 31 he sent another telegram, saying, "(Our) assurance... about the future of the State is not merely a pledge to your Government but, also to the people of Kashmir and to the world".

Broadcast to the nation (Nov 2, 1947): "We have decided to accept this Accession and send troops by air, but we made a condition that the Accession would have to be considered by the people of Kashmir later..... we have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given .... not only to the people of Kashmir but to the world. We



will not, and cannot, back out of it. We are prepared when peace and law and order have been established to have a referendum held under international auspices like the United Nations..."

Telegram to Liaqat Ali Khan on Nov 3, 1947: "I wish to draw your attention to broadcast on Kashmir which I made last evening. I have stated our Government's policy and made it clear that we have no desire to impose our will on Kashmir but to leave final decision to people of Kashmir...."

Address to Constituent Assembly on Nov 25, 1947: "... In order to establish our bonafides we have suggested that when the people are given the chance to decide their future this should be done under the supervision of an impartial tribunal such as the United Nations Organisation..."

Government of India's letter to the Security Council (Jan 1, 1948): " (In) order to avoid any possible suggestion that India had used the State's immediate" peril for, her own political advantage, the Government of India made it clear that... its people would be free to decide their future by the recognised democratic method of plebiscite or referendum which, in order to ensure, complete impartiality, might be held under international auspices..."

Statement in Parliament on Feb 12, 1951: "We have given our pledge to the people of Kashmir and subsequently to the United Nations; we stood by it and we stand by it today, Let the people of Kashmir decide." By then, Sheikh Abdullah had started showing his, true colours.

Ironically, Sheikh Abdullah was to claim at one stage that he was willing to ratify the State's Accession to India but was prevented from doing so by Nehru. After his release from internment for the second time, he said on April 15, 1964: "I sought to ratify the Accession and other commitment of mine through the Constituent Assembly. It was the Government of India which contested in the Security Council as well as in Parliament the Assembly's right to do so." He disclosed the same information to Dr. Syama Prasad Mookerjee in his correspondence with the latter

in 1953. Nehru confirmed this himself at a Press conference on June 21, 1952: "When the Constituent Assembly met for the first time I might inform you that it was its intention to pass a resolution forth with confirming the State's Accession to India. We asked it not to do it so as not to be embarrassed before the United Nations."

This is not all. To Nehru must also go the credit of incorporating the most divisive of all instruments, Article 370, in the Constitution. Once again, he did so surreptitiously, without taking anybody into confidence apart from Gopalaswami Ayyangar and keeping Sardar Patel totally in the dark about his intentions of granting Jammu & Kashmir some sort of a special status. Then there is the deal he struck with Sheikh Abdullah in July 1952, a deal that was to be given the official nomenclature of "Delhi Agreement.."

When it became apparent that yet another blunder had been committed by Nehru, he found himself on the defensive. Faced with problems of his own making, he took refuge behind the convenient excuse, "I do not know." In the end, he had to admit his failure on the Kashmir front (by then he had been outmanoeuvred by Sheikh Abdullah), and he did so in a letter to Sheikh Abdullah on April 25, 1952: "I have not thought of Kashmir or of you in that way (which way?) and so I am rather at a loss how to act when the very foundation of my thought and action has been shaken up." But by then it was too late. The damage had been done. It was made worse by the agreement that followed that year.

### **The wars of 1965 and 1971: The Tashkent Agreement and Simla Accord**

By enlarging the theatre of operation to Punjab and a bold change in strategy, the Indian defence forces managed to foil the Pakistani design of cutting off Jammu & Kashmir from the rest of the country. The nation achieved its aim, but only partially. The Government surrendered its strategic and tactical advantages in Tashkent. In this Soviet-brokered accord of 1966, an 'agreement' that had the tacit approval of the USA, the Government succumbed under pressure to the entry of foreign influence. This erosion of the

nation's sovereignty was voluntarily accepted.

In 1971, every card was stacked in India's favour after the Indian forces won a signal victory over Pakistan. But thanks to Mrs. Indira Gandhi's obduracy like Nehru, she refused to pay heed to the Bharatiya Jana Sangh's advice that she should drive a hard bargain with Zulfiqar Ali Bhutto (India had 90,000 Pakistani prisoners of war in its custody) and get him to give up all claims to Jammu & Kashmir whatever Pakistan lost on the battlefield, it regained at Simla. Though the nation had won the war, the Government agreed to the Simla Accord without gaining any lasting concessions on Jammu & Kashmir.

No less damaging was Mrs. Gandhi's 1975 agreement with Sheikh Abdullah whose salient features were:

- a) Article 370 would remain intact;
- b) Residuary powers would vest in the state Government;
- c) Provision of the Constitution that had been applied to the State with modifications, can be altered or repealed; and,
- d) It did nothing to prevent the repetition of the events of 1951-53 and save the State from the duplicitous and subversive politics of Sheikh Abdullah.

### **Politics of opportunism**

From the day Nehru took charge of Kashmir affairs to the exclusion of everybody else, Congress approach towards this state has been dictated by political opportunism rather than national interest. When Sheikh Abdullah began showing signs of breaking free of the Union and creating his own independent state the situation, was brought to Nehru's notice by the Praja Parishad as well as the Bharatiya Jana Sangh whose then president, Dr. Syama Prasad Mookerjee repeatedly raised the issue in Parliament only to be rudely snubbed by the Prime Minister. For instance in his inaugural speech in the first session of the first elected Parliament of independent India (May 1952), Dr. Mookerjee referred to Sheikh Abdullah's politics which had begun to threaten the very unity and

integrity of the country. He appealed to Nehru to take note of forces which had been unleashed by Sheikh Abdullah who had also recently declared that Parliament did not have any jurisdiction of Jammu & Kashmir. At this point Nehru interjected: "I know more about Kashmir than Dr. Mookerjee."

It is this overwhelming confidence in himself and, himself alone, that left the Government stumped, when Sheikh Abdullah finally decided to break free. The Government was unprepared to meet the crisis. Obviously, Nehru did not know enough about either Kashmir or its politics. If he knew, --- as he claimed time and again and did not act in time, he is guilty of acting against the nation's interests.

A quick look at Jammu & Kashmir's political history as it has unfolded even since Sheikh Abdullah failed in his final putsch for the creation of an "independent sheikhdom" will be instructive of the political expediency that has decided the course of Congress disastrous Kashmir policy.

On May 3, 1953, American Democrat leader Adlai Stevenson visited Srinagar where he and Sheikh Abdullah were closetted for many hours. In the discussions that took place, Sheikh Abdullah is believed to have repeated what he told the then US Ambassador to India, Loy Henderson, when he secretly visited Srinagar in September 1950. Henderson reported his talks in these words: "...in discussing future Kashmir, Abdullah was vigorous in restating his opinion that it should be independent; that overwhelming majority population, desired this independence; and that he had reason to believe that some Azad Kashmir leaders desired independence and would be willing to cooperate with leaders of National Conference..." Soon after Stevenson's talks with Sheikh Abdullah, The New York Times published a map of "Independent Kashmir" on July 5, 1953. On July 10, Sheikh Abdullah declared from Mujahid Manzil: "A time will come when I will bid them (India) good - bye." He elaborated on the theme at the so called Martyr's Day rally on July 13: "It is not necessary that our State, should become an appendage of either India or Pakistan." Curiously,



American interests in Kashmir at this point of time coincided with British pronouncements that were not dissimilar to what Sheikh Abdullah was saying. On Nov 11, Clement Attlee made a statement in London: "Kashmir should belong neither to India nor to Pakistan but be independent."

Sheikh Abdullah was keeping his cards close to his chest. His Cabinet colleagues felt left out and this led to dissent and disagreement. The "Sadar-e-Riyasat asked Sheikh Abdullah to summon a Cabinet meeting; Sheikh Abdullah contemptuously ignored the Sadar-e-Riyasat and went off to Gulmarg. By now Nehru felt compelled to act. Sheikh Abdullah was dismissed and arrested in the early hours of Aug 9, 1953, Bakshi Ghulam Mohammad was sworn in as Wazir-e-Azam. Bakshi Ghulam Mohammad's tenure was marked by some important developments. On May 14, 1954 the first Presidential Constitution (Application to J & K) Order was issued, extending provisions of the Constitution to the State. This was followed by further integrative measures and on April, 1959, the permit system for entering the State was abolished. Meanwhile, from his confinement Sheikh Abdullah launched the Plebiscite Front through Mirza Afzal Beg on Aug 9, 1955.

Nehru, in the meantime, secured the release of his friend Jan 8, 1958. Sheikh Abdullah lost no time. He delivered a highly provocative speech from Hazratbal shrine on Feb 21, which resulted in widespread loot, arson and murder. Finally, he was rearrested on April 29, along with Mirza Afzal Beg and 22 others for hatching the "Kashmir Conspiracy" with the aim of Jammu and Kashmir's annexation by Pakistan.

By then Nehru was getting restive. His control over Kashmir's affairs such as it existed during Sheikh Abdullah's days, was fast disappearing. When Bakshi Ghulam Mohammad offered to resign under the "Kamraj Plan" --- an inexplicable decision as he was not a Congress man -- Nehru promptly accepted his resignation on Oct 4, 1963. But Nehru failed to prevent Bakshi Ghulam Mohammad from getting his own man, Shamsuddin, installed as the Wazir-r-

Azam. This was followed by an incident which was a precursor to the misuse of mosques. Moie Muqaddes, the Prophet's relic kept at Hazratbal, disappeared on Dec 27, 1963. The Plebiscite Front got into action and communal violence erupted all over the valley. Curiously enough, the relic was restored on Jan 4, 1964. It is widely believed that the Plebiscite Front was behind that the Plebiscite Front was behind the disappearance to discredit Bakshi Ghulam Mohammad and Shamsuddin who resigned and Ghulam Mohammad Sadiq took charge on Feb. 29, 1964.

To Sadiq goes the credit for doing away with the nomenclature of Sadar-e-Riyasat (it was changed to Governor) and Wazir-e-Azam (it become chief Minister) by amending the Jammu & Kashmir Constitution of May 30, 1965. Sadiq remained Chief Minister till his death on Dec. 12, 1971.

Nehru was most unhappy with the turn of events. The special status he had so assiduously created for Jammu & Kashmir to facilitate his friend Sheikh Abdullah was being eroded by the day. The, "Kashmir's conspiracy" case investigations had revealed prima face evidence against the accused. A conviction could permanently end Sheikh Abdullah's political career. He used all his persuasive abilities to convince Sadiq to withdraw the case and Sheikh Abdullah was released on April 8, 1964. A triumphant Sheikh Abdullah toured Kashmir and came to Delhi where he stayed as Nehru's guest. Next month Sheikh Abdullah went to Pakistan and met Ayub Khan on May 26. On his return, it was back to denouncing India from public platforms. During his trip abroad (ostensibly for Haj) in February 1965, he lunched a tirade that greatly embarrassed India and on March 28 he met Chinese Premier Chou Enlai as part of what come to be known as the "Pindi-Peking Conspiracy" against India in respect of Kashmir. His passport, was cancelled and he was arrested at Delhi Airport on May 9, 1965. So much for Nehru's faith in Sheikh Abdullah.

After the Aug-Sept 1965 war with Pakistan and the subsequent agreement in Tashkent. Sheikh Abdullah was released on Dec 8, 1967. The National Conference had ceased to exist, but

the Plebiscite Front stepped up its hate-India campaign. As a result, Sheikh Abdullah, Mirza Afzal Beg and G.M. Shah were expelled from the State on Jan 8, 1971 and the Plebiscite Front banned on Jan 12.

After Pakistan's crushing defeat in 1971, Sheikh Abdullah and Mirza Afzal Beg were chastened men — but only temporarily. Indira Gandhi, in keeping with Nehru's policy of insisting on making peace with Sheikh Abdullah at all costs and treating him as the sole arbiter of Jammu & Kashmir, initiated a dialogue in 1973. The talks between Mirza Afzal Beg and G Parthasarathy resulted in what is known as the "Kashmir Accord that was signed on Feb 24, 1975.

Chief Minister Syed Mir Qasim, who had taken charge on Dec 13, 1971, vacated the office for Sheikh Abdullah after the Congress Legislative Party elected him as its leader and he was sworn in on Feb 25, 1975. Events had come a full circle in Jammu & Kashmir. The Congress's gains as usual, were short-lived while the nation suffered another blow when Sheikh Abdullah revived the National Conference and became its President on April 13, 1975. He dissolved the Plebiscite Front on July 5, 1975 and merged it with the National Conference. This led to a ridiculous situation, entirely of the Congress making. It was supporting a Chief Minister who was the President of its rival political party.

The arrangement soon came under severe strain following the Congress defeat in the general election of March 1977, with drew support to him on March 25 and staked its claim to form the next Government. It was back to opportunism, but this time Sheikh Abdullah trumped the Congress. He convinced Governor L K Jha to dissolve the Assembly prompting the Congress to describe his action as a sordid act of betrayal". But then, the is is not the first time he had betrayed the Congress which refused to learn from its mistakes.

In the campaign that followed, Sheikh Abdullah was liberal with his criticism of India and raised communal and parochial feelings to a feverish pitch. His campaign rested on the theme: "We

shall not hesitate to secede from India if we are not assured a place of honour and dignity in terms of the safeguards provided by Article 370... We have to strengthen it (Art. 370) with all our might. The National Conference swept the election on this platform and Sheikh Abdullah was sworn in on July 9, 1977, Thereafter, he set himself to the task of ensuring that his son Dr. Farooq Abdullah would succeed him.

Sheikh Abdullah expired on Sept 8, 1982. Dr. Farooq Abdullah took charge with the support of Prime Minister Indira Gandhi and Governor B.K. Nehru. But they fell out during the June 1983 elections. Dr Abdullah's coming to power coincided with political turmoil and a spurt in anti-national activity. He was finally dislodged by his brother-in-law, G.M. Shah in connivance with Indira Gandhi on July 2, 1984. The Shah Government was shown the door on March 7, 1986 and this was followed by first Governor's rule and then President's rule.

### **DEMOLATION OF TEMPLES IN 1986**

By the end of 1986, it was time for yet another accord, this time between Rajiv Gandhi and Dr. Farooq Abdullah who had, in the meanwhile, flirted with the other national Opposition parties. National Conference Congress coalition Government headed by Dr. Abdullah was sworn in on Nov 7, 1986. The coalition swept the March 1987 Assembly elections which were heavily rigged, paving the way for political discontent (fanned by G M Shah's Muslim United Front) in the Valley that greatly facilitated Pakistan in its subsequent enterprise to foment insurgency. With the State on the boil and having dismantled whatever remained of the law and order machinery, Dr Abdullah resigned on Jan 18, 1990. and Jagmohan took over as Governor of the State.

Prime Minister P V Narsimha Rao's politics did not mark a departure from the past traditions of the Congress. In keeping with the policy of treating Jammu & Kashmir as the fiefdom of the Abdullah clan, he tried to strike a fresh deal with the National Conference. It is in this context that, we should view his "anything short of azadi", statement in Parliament and the "Outrageous



statement” offering to revert the position back to pre-1953 and reviving the offices, af Sadar-e-Riyasat and Wazir-e-Azam. Sensing New Delhi's willingness to capitulate, Dr. Abdullah hard bargain to secure more than what has been offered to him. His father did the same with Nehru, and succeeded. There is no reason why the son should not tread the same path. The surprising part of the perpetual treason against the country is that the statment of Dr. Farooq Abdulla's son Umar Abdulla in Parliament during trust vote debate over Nuke deal instead of limiting his item on the Nuke Deal discussion veered round Kashmir and said that not inch of land will be given to Shri Amarnath Shrine Board. Here again the son is outdoing only what is his father did to the detriment of the integrity and unity of the country.

The anti national & deviously chalked strategy and choice PDP, National Conference, Congress and the smaller political outfits will have be halted soon. But unfortunately the sad story continues but it is pertinent to stress here that the long saga of sacrifice of the nationalists forces of State shall leave no stone unturned to thwart the nefarious designs that are in play to undermine the unity, integrity and peaceful co-existence in the State.

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## 11. KASHMIRYAT A FALSE PREMISE

Communal division of India and creating of Pakistan was the result of evil designs of imperialists. Now secular India cannot tolerate another communal division whether in Kashmir or elsewhere. This state should be defended as a part of India as per the constitution of the country as also the unanimous resolve of the Parliament. A few days back Home Minister of India started a "quite Diplomacy", in search of solution to the "Kashmir Tangle". He was ready to talk to the separatists who do not agree that Kashmir is an integral part of India. This creates uncertainty in Kashmir. Some talk of Autonomy by restoring 1953 conditions without ignoring the fact that much water has flown through the rivers of Kashmir, and some talk of Self Rule and some of preserving the "Kashmiriyat". As if other states like Rajasthan, Punjab, Kerala, Bangalore, Bangal and Assam has nothing to be proud of their culture. This fundamental truth needs to be driven home that Kashmir Valley alone is not the whole of State as the impression is being created. It consists of Kashmir Valley, Jammu and Ladakh. The Valley is just one eighth of the State.

I fail to understand "Kashmiryat" Is it Kashmiryat that five lakh of Kashmiri Pandits and other nationalists are pushed out of the Valley. If the Indian constitution provides a safe and progressive life for crores of Indian Muslims, How it is harmful for 40-50 lakhs Kashmiri's Muslims?

Because of communal considerations and other pressures we are committing folly after folly, whether it was the issue of accession or going for a ceasefire with Pakistan or granting a separate status to the State or it was the real democratic functioning like other parts of the country as a result of which whole country is facing the pain both in terms of blood and money.

While Pakistan has fought four wars with India. First one

in 1947, second in 1965, third in 1971 and fourth in 1999 in Kargil. It never succeeded in any way except coming to conclude negotiations in the shape of Shimla agreement in 1971. It could not take even an inch of land from India. Now again it has mounted a large scale propaganda through proxy war to campaign to the world for its cause in Kashmir. We in India seem to have done little beyond affirming and reaffirming that Kashmir is an integral part of our country and that it will be defended at all costs.

We passed resolution in 1994 in the Parliament that whole of Kashmir is ours. But simply passing a resolution and doing nothing, gives an impression that our case is only that of possession and our ability to hold on to it is by force. The fact, however is that India alone has legal as well as moral right over Kashmir and Pakistan's case is only that of a thief shouting the proverbial Thief "Thief, thief".

When ever talks were held with any anti-national forces within or outside the country we lost the territory. Because of UNO cease fire resolution we lost Pakistan occupied Kashmir (POK). Sheikh created a permanent wall of 370 between J&K and rest of India. we lost Hajipeer and adjoining areas at "Tashkent" in 1966.

We lost Chhamb, wasted the opportunity of using a bargaining factor 93 thousands prisoners of war and areas of Pakistan which were occupied by us by the blood of Jawans at Shimla in 1971. It was only during Kargil war 1999 that even an inch of land was not given. Again we are talking to separatists through "quite diplomacy". Only God knows what will be its result?

It is true that six decades of conflict have not shifted six inches of grass from one side to the other. But still we create uncertainly by not accepting the verdict of the history.

## **A STORY OF BLUNDERS**

The policy of the Government on Kashmir is a long story of blunders. Jammu and Kashmir wanted to accede to India earlier. But then Government of India did not agree to it. When Pakistan attacked

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Kashmir and there was no other option left, only then Kashmir was integrated with a condition of plebiscite in Kashmir. However, this offer of plebiscite was not made to Pakistan. It was for the people of Jammu and Kashmir. Pakistan has no locus standi in this matter. When Pakistan was not prepared to give this right of self determination to Pakhtoonistan etc, how could it demand the same for Jammu and Kashmir. Then we went to UNO to get Pakistan declared as an aggressor by the world body? UNO did not justly perform its duty. But when South Korea was attacked by North Korea the same world body declared North Korea as an aggressor with in 24 hours.

Special status for this state has been the root cause for so many problems in Jammu and Kashmir such as the secessionism, religious bigotry, political anarchy, regional bias, unlimited malpractices, uncertainty in the State and ever increasing unemployment etc. Patriotic people of the state as also of the other parts of the country under the dynamic leadership of Dr. Syama Prasad Mookerjee and great leader Lt. Prem Nath Dogra made tremendous sacrifices to demolish the barriers between this state and rest of the country. Permit system for entry to this state and vice versa was abolished. Due to their strenuous efforts and sacrifices of the people of Jammu and other nationalistic forces of the State Prime Minister became the Chief Minister, Sadra-Riyasat was changed to Governor, extension of Jurisdiction of Supreme Court, Election Commission, Controller and Auditor general of India over the state Integration of administrative services such as IPS and IAS service and labour laws and other financial integrations were result of this historic struggle.

No doubt because of this great struggle many signs of separatism were removed and several central laws beneficiary to the people of this State were extended but still the root cause of many maladies the Article 370 of the Indian Constitution still persisted, although it was incorporated as a temporary proviso amidst warnings by the nationalists including Maulana Mohani and others. This barrier of separatism is causing the regional



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discrimination against Jammu and Ladakh Rehabilitation of refugees and displaced persons is jeopardized and many hurdles in industrialisation are created and above all breeding secessionist and militancy voices are heard.

Most of the problems especially that of increasing unemployment in Jammu and Kashmir is due to the separate status granted under obnoxious Article 370 in presence of which industrial growth could be a mirage only, and without Industries, the unemployment is bound to persist. Hence, every nationalist should work to get demolished the barriers created between this state and rest of the country because of this Article.

During NDA rule General Musharaf at Agra summit had to return empty handed as he wanted to establish Kashmir as a disputed territory. But the dialogue with Pakistan was resumed only when General Musharaf had publically pledged that no soil under control of Pakistan would be allowed to be used for cross border terrorism. The experience of the past has been well established that peace can not be attained through yielding and appeasement.

Now again the voices of resuming the peace processes have started but they must know that clapping always requires two hands. The real problem is lack of sincerity from Pakistan side which has been flouting every agreement right from the day one and is failing to live like a good neighbour. So for our record of tackling terror is confused, ill coordinated, incoherent and is only aimed at appeasing too many people particularly the separatists. We never asserted our rightful positions and never communicated to enemy that Indian blood is not dispensable. We have yet to learn to be assertive. Despite our huge size, huge economy and military strength we have never been taken seriously by the powers that count in the international affairs. Many of these countries laugh at us when we talk of 'Mohabat' to our neighbours who have never reciprocated our good intentions.

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## 12. THE KASHMIR ISSUE

*Dr. Syama Prasad Mookerjee*

I agree with the Prime Minister that the matter of Kashmir is a highly complicated one and each one of us, whatever may be his point of view, must approach this problem from a constructive stand point. I cannot share the view that we creating a new heaven and a new earth by accepting the scheme which has been placed before the House on the motion of the Prime Minister. The question can be divided into two parts. One relates to the international complications arising out of Kashmir and the other relates to the arrangements that have to be made between Kashmir and ourselves regarding the future Constitution of Kashmir.

It has been said that I was a party when the decision was taken to refer the Kashmir issue to the U.N.O.... That is an obvious fact. I have no right and I do not wish to disclose the extraordinary circumstances under which that decision was taken and the great expectations which the Government of India had on that occasion, but it is a matter of common knowledge that we have not got fair treatment from the United Nations which we had expected. We did not go to the U.N.O with regard to the question of accession, because accession then was an established fact. We went there for the purpose of getting quick decision from the U.N.O. regarding the raids which were then taking place by persons behind whom there was the Pakistan Government. The raiders merely acted on behalf of somebody else... Some-how, we should withdrawal ourselves, so far as consideration of the Kashmir case is concerned, from the U.N.O. We can tell them respectfully that we have had enough of the U.N.O. and let us now consider and try to settle the matter through our own efforts. I am not suggesting that India should withdraw from the U.N.O. The only matter regarding which the dispute still continues is about the one-third territory of Kashmir

which is in the occupation of the enemy. The Prime Minister said today that portion is there. It is a matter for national humiliation. We say that Kashmir is a part of India. It is so. So, a part of India is today in the occupation of the enemy and we are helpless. We are peace-lovers, no doubt. But peace-lovers to what extent?-that we will even allow a portion of our territory to be occupied by the enemy? Of course the Prime Minister said: thus far and no further. If the raiders enter into any part of Kashmir, he held out a threat of war not in relation to Pakistan and Kashmir, but war on a bigger scale between India and Pakistan.

Is there any possibility of our getting back this territory? We shall not get it through the efforts of the United Nations: we shall not get it through peaceful methods, by negotiations with Pakistan. That means we lose it, unless we use force and the Prime Minister is unwilling to do so. Let us face facts-are we prepared to lose it?

It has been said that there is some provision in the Constitution, that we are bound by the pledges which have been given. Pledges? Undoubtedly, so many pledges we have given. We gave a pledge to Hyderabad. Did we not say that there would be a Constituent Assembly for Hyderabad? It was followed by another pledge that the future of Hyderabad would be decided by the Legislative Assembly of Hyderabad. But is not Hyderabad already a part of the Indian Union? We gave pledges also to those princes whom we are liquidating in different from today. If we talk of pledges we have given pledges on many other occasions. We gave pledges to the minorities in East Bengal. That was given after the attainment of independence. The Prime Minister said the other day that even if Kashmir had not acceded to India, when Kashmir was attacked by the raiders on humanitarian grounds the Indian army could have marched to Kashmir and protected the distressed and oppressed. I felt proud. But if I make a similar statement, or even a similar suggestion for the purpose of saving the lives and honour of nine million of our fellow brethren and sisters-through

whose sacrifices to some extent at least freedom has been achieved, I am a communalist, I am a reactionary, I am a war mongar!

Pledges? Undoubtedly pledges have been given. I am also anxious that pledges should be respected and honoured. What was the nature of the pledges? We did not give any new pedge to Kashmir. Let us be clear about it.

What was the set-up we accepted when the British withdrew from India? There was the Indian India divided into India and Pakistan and there was, If I may call it, the Princely India. Every one of those five hundred rulers got theoretical independence and they need have acceded to India only with relation to three subjects. So far as the rest was concerned it was purely voluntary. That was the pattern which we accepted from the British Government. So far as the 498 States were concerned, they came to India, acceded to India on the 14th August 1947 in relation to three subjects only, but still it was accession full accession. Later on, they all come in relation to all :these subjects and were gradually absorbed in the Constitution of India that we have passed. Supposing some sort of fulfillment of the pledge that we are thinking of so literally in relation to Kashmir, was demanded by these States, would we have agreed to give that? We would not have because that would have destroyed India. But there was a different approach to the solution of those problems. They were made to feel that in the interest of India, in their interest, in the interest of mutual progress, they will have to accept this Constitution that we are preparing and the Constitution made elaborate provisions for nationally absorbing them into its fabric. No coercion; no compulsion. They were made to feel that they could get what they wanted from this Constitution.

May I ask-was not Sheikh Abdulla a party to this Constitution? He was a Member of the Constituent Assembly; but he is asking for special treatment. Did he not agree to accept this Constitution in relation to the rest of India , including 497 States. If it is good enough for all of them, why should it not be good enough



for him in Kashmir.

We are referred to the provision in the Constitution. The Member from Bihar... said there was going to be compulsion; that we are going to hold a pistol at the head of Jammu and Kashmir saying that they must accept our terms. I have said nothing of the kind. How can we say that? What is the provision we have made in the Constitution? Article 373-read it and read the speech of Shri Gopalaswami Ayyangar when he moved the adoption of that extraordinary provision. What was the position then? All the other States had come into the picture. Kashmir could not because of special reasons. They were: first the matter was in the hands of the Security Council; secondly, there was war; thirdly, a portion of Kashmir territory was in the hands of the enemy and lastly and assurance had been given to Kashmir that constituent assembly would be allowed to be formed and the wishes of the people of Kashmir ascertained through a plebiscite. Those were the factors that had yet to be fulfilled and that was why a permanent decision could not be taken. It was a temporary provision.

He said categorically that he and also the Kashmir Government hoped that Jammu and Kashmir would accede to India just as any other State has done and accept the provisions of the Constitution. It is not a question of compulsion on our part. The Constitution of India does not say that whatever the Constituent Assembly of Jammu and Kashmir would ask for India would give. That is not the provision. The provision is-agreement, consent.

Certain proposals have been made today. Some of them do not like them. What are we to do? If we talk we are reactionaries, we are communalists, we are enemies. If we keep quiet and if a catastrophe comes after a year, then you were a party to it, you kept quiet-therefore, you are estopped from saying anything.

I am most anxious, as anxious as anybody else that we should have an honourable, peaceful settlement, with Kashmir.

I realise the great experiment which is being made on the

soil of Kashmir. Partition did not help anybody. I come from an area where sufferings are continuous, they are going on. We feel every day, every hour, the tragic effects of partition, the tragic possibilities of approaching this national problem from a narrow, communal and sectarian point of view. Why did we not utter a single word against the policy of Sheikh Abdulla so long? I could have spoken. I came out of this Government two and a half years ago. On the other and, I supported: wherever I spoke publicly the policy of the Kashmir Government I said that this was a great experiment which was going on and we have to keep quiet and see that the experiment is made a success. We must be able to show that India is not only in theory, but also in fact, a country where Hindus, Muslims, Christians and everyone will be able to live without fear and with equality of rights. That is the Constitution that we have framed and which we propose to apply rigorously and scrupulously. There may be some demands to the contrary here and there. But do not regard that, whenever an attack is made on certain matters of policy, some narrow sectarian, communal motive is promoting us. Rather it is the fear that history may repeat itself. It is the fear that what you are going to do may lead to the 'Balkanisation of India, may lead to the strengthening of the hands of those who do not want to see a strong United India, may end to the strengthening of those who do not believe that India is a nation but is a combination of separate nationalities. That is the danger.

Now, what is it that Sheikh Abdullah has asked for? He has asked for certain changes to be made in the Constitution. Let us proceed coolly, cautiously, without any heat or excitement. Let us examine each of them and ask him and ask ourselves: if we make an allowance in respect of these matters do we hurt India, do we strengthen Kashmir? That will be my approach. I shall not say anything blindly because it transgresses some provisions of this book, the Constitution of India. I would not do so. I would have liked the Prime Minister to have sent for some or us in the Opposition when Sheikh Abdullah was here. He faces us today

with his decisions. I do not like these public discussions because I know their repercussions may not be desirable in some quarters. He might not have accepted our suggestions, but I would have liked to have met him—those of us who differ from the Prime Minister's attitude on this question. I met him at a private meeting and we had a full and frank discussion. But we would have liked to have met Sheikh Abdullah and others in a friendly way and explained our point of view to them. We want to come to an agreement, an agreement which will make it possible for India to retain her unity and Kashmir to retain her separate existence from Pakistan and be merged with India.

Since when did the trouble start? Let us look at it dispassionately. Since Sheikh Abdullah's return from Paris some time ago statements started to be made by him which disturbed us. Even then we did not speak out. His first statement he made in an interview which he gave when he was abroad about his vision of an independent Kashmir. And then when he came he amplified it then again retracted from it and gave an explanation, and then the speeches which he had made during the last few months were of a disturbing character. If he feels that his safety lies in remaining out on India, well, let him say so; we will be sorry for it but it may become inevitable. But if he feels honestly otherwise, as I have always hoped and wished, then certainly it is for him also to explain why he wants these alterations to be made.

Sheikh Abdullah spoke in the Constituent Assembly of Kashmir about three or four months ago, words which have now been withdrawn, but words which created a good deal of misgivings in the minds of all Indians irrespective of party affiliations. I do not know whether the Prime Minister saw this:

*"We are a hundred per cent sovereign body. No country can put spokes in the wheel of our progress. Neither the Indian parliament nor any other Parliament outside the State has any jurisdiction over our State".*

It is an ominous statement. I shall make an offer to the Prime Minister and to Sheikh Abdullah. I shall give my full, whole hearted support to the scheme as an interim measure... The Prime Minister said today that nothing is final. It cannot be final, because things have to be discussed in their various details. But even then, I am prepared to give my support. Let two conditions be fulfilled.

Let Sheikh Abdullah declare that he accepts the Sovereignty of this Parliament. There cannot be two Sovereign Parliaments in India. You talk of Kashmir being a part of India, and Sheikh Abdullah talks of a Sovereign Parliament for Kashmir. It is inconsistent. It is contradictory. This Parliament does not mean a few of us here who are opposing this. The Parliament includes a majority of people who will not be swayed by any small considerations. And why should he be afraid of accepting the Sovereignty of this Parliament of Free India?

Secondly, it is not a matter of changing the provisions of the Constitution by the President's order. Let us look at some of the changes which are being sought for. We are supporters of the Maharaja! That is what is said against us. I have never met the Maharaja. I do not know him personally. We are not supporters of this Maharaja, or of any Maharaja as such. But the Maharaja is there not by his own free will. The Parliament of India, the Constitution has made him what he is, namely, the constitutional head of Jammu and Kashmir. And what is the irony? At present Sheikh Abdullah's Government is responsible to this Maharaja according to the Constitution, responsible to one who is being described as a wretched fellow who has to be turned out lock, stock and barrel.

The Maharaja is there as a constitutional head. If you feel that this should be taken out, change your Constitution. Say that there will be no hereditary Rajpramukhs. It is a matter worthy of consideration. Let us consider it. But see the way in which it has been put: a Hindu Maharaja is being removed. That is one of the



war cries in Pakistan. But who finished the royal powers of Hindu Maharajas? Not Sheikh Abdullah, but the Constitution of Free India. We did it. We said that no ruler would have any extraordinary powers, that he will be just head of the government which may be technically responsible to him but later on responsible to an elected legislature. But now great credit is being taken that a unique performance is being done in Kashmir. In every speech of his he gave it: the Maharaja, the Dogra raj is being finished. Is that a propaganda? Is that necessary? You are flogging a dead horse. It is finished. What is the use of saying it?

What about the elected Governor? I have got here the proceedings of the Constituent Assembly. The Prime Minister will remember that in our own Constitution we at first made a provision for an elected Governor, and then later on Sardar Patel and the Prime Minister and others felt that in the democratic set-up that we contemplated an elected Governor had no place. Read the speech. It was stated that the Governor will be there to act as the representative of the President and if the Governor is elected by the people or the legislature and the Chief Minister also will be elected: as such there is every likelihood of a clash, then again, the Governor will be a party man. And the Prime Minister pointed out all these considerations and claimed that the very special reason why in order to retain the unity of India and contact between the Centre and all the States the Governor should be nominated by the President. You just ignore these basic points because Sheikh Abdullah says: 'I want an elected head now.' Why can you not tell him and others what you have done in the Constitution that originally we provided for an elected Governor but after a good deal of thought we did away with that? Even then I say if today in your wisdom you feel that an elected head is a necessity and it will help you, consider it. Bring it up as a specific proposal. Let us discuss the pros and cons of it. But suddenly my friend Mr. Hiren Mukerjee says: people are clamouring for an elected head. People are clamouring for an elected head every where. Are you going to have elected heads everywhere? In fact, as things are happening we may abolish Governors altogether.

Governorships are often reserved for various classes of persons—disappointed, dedicated, rejected, unwanted Ministers and so forth. We need not have this class at all. Or, if you want to have them, have them. I am not particularly interested. But this is a change for which no justification is given.

And then the flag. The flag has a significance. It will not do for the Prime Minister to say that it is a matter of sentiment. It was announced in the papers three days ago that the Indian flag will fly only on two ceremonial occasions and otherwise the State flag alone will fly there. If you feel that the unity and integrity of India are not affected and it will not lead to fissiparous tendencies being generated, accept it and do it for all. But why do it as a matter of surrender to Sheikh Abdullah's demand'?

He wanted to call himself the Prime Minister. That is how he first started. Some of us did not like it. We know one Prime Minister of India including Kashmir, that is the Prime Minister who is sitting here. How can you have two Prime Ministers, one Prime Minister in Delhi and another Prime Minister in Srinagar, who will not call himself the Chief minister but a Prime Minister. At first I thought it was a small matter and we should not look at it but see how the process is developing - some sort of special treatment at every step and he must be treated in a very different way. Look at the citizenship rights and fundamental rights. What is it that we are doing? Has the House considered it? Has the House discussed the pros and cons of the recommendations which have been made. You are changing without giving much thought the provisions of the Constitution regarding citizenship. It was said that rich people are rushing to Kashmir and purchasing property. As the Prime Minister mentioned in his statement, in article 19 (5) there is a provision. We discussed this article threadbare when we framed the Constitution. There were attempts made by various provinces and they wanted to have some special protection against unauthorized purchases of land on a large scale. What is it that we have said? We have said that any State legislature may pass a law, imposing

reasonable restrictions regarding acquisition of property or movement from one part to another in the public interest or in the interest of Scheduled Castes and Scheduled Tribes. If Sheikh Abdullah feels that in Kashmir some special restriction should be done, the clause is there. I would like to ask the Prime Minister categorically about this. He has not mentioned it. He has skipped over it. Is it intended that the restrictions which the Kashmir Assembly will impose will be in accordance with this exception or is it proposed to give it something more?

There are four classes of citizens. I have got the details, but I have not the time to go through them. But those were done in the time of the much cursed Maharaja. Are they to be maintained or are they going to abolish the four different categories of citizenship? I am reminded of a story which was written by Lord Curzon in a book. A distinguished nobleman from England went to the court of Shah of Persia 50 or 60 years ago accompanied by his wife. Both of them were presented and the Shah was a bit inattentive and the secretary asked: "What should be the honour done to the lady?" There were three different categories of Order of Chastity and the award was made 'Order of Chastity—class three'. That is how the order came out and then it was realized that some thing had been done which was of a staggering character and of course amends were made after the damage was done. Four classes of citizenship in Jammu and Kashmir—what for? They should be abolished. There should be only one class of citizenship. Would Indians take all your property? It was not suggested that Indians should go and purchase property as they liked. Supposing some Indian comes and purchases some property, you may have legislative measures. We have accepted it. What is the fear? We have a Kashmiri Prime Minister of India. We have a Kashmiri Home Minister of India. We are happy in India. We do not mind it. We welcome them. What is the fear? Is it feared that Indians will go and invade Kashmir and one of them will become the Chief Minister of Jammu and Kashmir? We are not going to raid Jammu and Kashmir. I have ever visited this

beautiful part. I would like to go and stay there for some time. I have not got the money to purchase a house. In any case, I would like to go there. This is what you have in regard to fundamental rights. You are having new changes there which are very difficult to justify. The Prime Minister mentioned 2 or 3 things-scholarships and services etc. What is this 'etc.'? And why Services? In services, - do you want to make a difference between one citizen and another. Even there, as you know, in our Constitution, Parliament and Parliament alone has the right to make special provision regarding entrance to services for those who have to be protected. Now there are similar demands made in the South. I have been going through their demands during the last few weeks. They also feel perturbed by the strict operation of some of these provisions. When you throw open the doors to them, they also will want similar protection.

There is another thing to which Prime Minister has not referred. I was really amazed to find how a special provision could be made. As you know two lakhs of people have gone away to Pakistan. There is a provision that a special law will be incorporated to get these people back to Kashmir. War is still going on. On the one hand Fundamental rights regarding civil liberty are proposed to be made more strict.. and on the other you are going to throw open the door and allow Pakistanis to go to Kashmir; for this there is to be a special law and there is a special agreement. Why this anxiety on the part of Sheikh Abdullah to make a special provision for getting back those who ran away to Pakistan and who are not prepared to come. Is there any point in it? How will it affect security? Those who have been killed cannot go back. Those who are alive can come back tomorrow if they honestly believe in India and if they really want to live in Jammu. They must be tested. Let them come back. No special provision is needed for it.

So far as Jammu is concerned, as you know, it was a most tragic state. It was done by both sides. There were Muslims who were bitter and there were Hindus who were bitter. That was a



dark period when many parts of India were like that, but today, what is the position? You have allowed how many thousands. I forgot the number. They have come away from Jammu and Kashmir and are a burden on India. Why should not there be a special provision here in the agreement that promptly they will be taken back to Jammu and Kashmir? There are several thousand of them who have come. Why are they not going back. I do not know how many Pandits have come away from Kashmir. They also must go back to Kashmir. So far as the other portion is concerned, that also is a serious matter. In the one-third portion of Jammu and Kashmir which is now under Pakistani occupation, nearly one lakh of Hindus and Sikhs have come and taken shelter, within the Kashmir territory. What will happen to them? They will have to be taken care of. You are thinking of those who have become Pakistanis for the time being. You will reconvert them and reconfirm on them the status of Kashmiri citizens but those unfortunate beings who today have taken shelter, how will they be given accommodation? Is there land enough for them. These are matters which had not received any attention.

As regards the emergency provision, it is an amazing stand. If there is an emergency on account of internal disturbance, the President of India will not have the last say. Why this fear of the President of India? Can you contemplate a more gratuitous insult to the President of India? Here the Kashmir Government must conform to the Constitution. Why should they request if there is an internal disturbance which is the creation of their own misdeeds?

Why should they request you if, for instance they are in league with others from the upper side, China or Russia, through our other friends? Why should they come and request you for your interference? I would expect the Prime Minister to tell whether the other emergency provisions apply or not. As you know, there are two other very important emergency provisions in the Constitution. Article 354 relates to application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation

and the other article is 356 relating to provisions in case of failure of Constitutional machinery in States. Has Sheikh Abdullah accepted the application of article 356 or has he accepted the more important provision contained in article 360 provisions as to financial emergency. Has he accepted that provision? The Prime Minister does not make any reference to it. The Supreme Court's jurisdiction also has not yet been accepted.

I shall conclude, by making this construction suggestion. These comments which I made naturally had to make without commenting in detail on the reactions of Sheikh Abdullah. He wrote to me and said that he would like to meet me when he was in Delhi last time. I was not here on that day. So I could not meet him. I sent him a friendly reply. Perhaps I would meet him some time. It is not a question of his meeting me or I meeting him. I submit that we must proceed according to certain standards. First of all there is no question of the President by virtue of his power to make orders altering the provisions of the Constitution in materials respects.

If the Prime Minister feels that a case has been made out re-examination of certain important provisions, for instance and, if you feel that land should be taken without payment of compensation provide for it in the Constitution. You consider all these items and make your provisions so elastic, that you can apply them either to the whole of India or you can apply them to only such parts where this Parliament of India will feel that such special treatment is necessary. Proceed in accordance with a constitutional manner, not just play with the Constitution. It is a sacred document and it is a document on which much labour and much thought were bestowed. If you feel some changes are necessary in order to take into consideration the new set up that is slowly developing in India, whether in Kashmir or other parts of India, by all means let the people of the country have a chance to express their opinion.

Lastly, a charge was levelled that some of us have advocated separate consideration of Jammu and Ladakh. I would assure you

and the House that I do not want that Jammu and Kashmir should be partitioned. I know the horrors of partition. I know the results which may ensue if partition comes. But the responsibility for preventing partition will rest on those who are today the masters of Jammu and Kashmir and are not prepared to adopt the constitution of India. What is the crime if today the people of Jammu claim that they should be treated separately in the sense that they should be allowed to join fully with India/mark it, it is not a question of running away from India- if they say that they would like to accept in toto the Constitution of free India, is there any crime that they then commit? I am not suggesting that you partition Jammu and Kashmir I am not suggesting that you send Kashmir or Kashmir valley out of India. And it is not for me or for us sitting in this House to decide this matter. As the Prime Minister pointed out very rightly, it is the people of that territory who will have to decide. Now suppose the people of Jammu and Ladakh feel that either it should be full accession in relation to the whole of Jammu and Kashmir or if that is not acceptable to Sheikh Abdullah, then, at least these two provinces, the two separate entities could be justified historically or otherwise, that they should be allowed to join with India. Let Kashmir continue in any way that it likes even with more autonomy, with less possibility of interference by India; that is a possibility which we cannot rule out. I hope that this question will be considered in its full possible implications.

My friend from Kashmir, Maulana Masuodi, for whom I have very great regard-I tried to follow his speech this morning-referred to Jammu, the last question which I would answer. Well, if this demand is made by Jammu. he said Jammu is a Province which in 1941 had a Muslim majority. He said that, but did not complete the story. Undoubtedly it was a Muslim majority Province in 1941, but it became a Muslim majority including those districts-which have now fallen into the Pakistani-occupied area. So, if you exclude those areas.....

I am not going to surrender them. I am very glad he has put

the question. The Prime Minister says that area will not be re-occupied, but it is a different question. You are not going to re-occupy it, and it is not possible. In any case those people have worked against Jammu and Kashmir, they have become, as has been repeatedly said more friendly to Pakistan than to India.

If you take the 1951 census figure-the figures have not been published but it is on the basis of the territory that is under our occupation-75 percent of the population of Jammu will be Hindus. But I am not proceeding on the basis of Hindus and Muslims. Let me make it clear. I am proceeding on the basis of the will of the people to come to India either in whole or in part. If these two Provinces Ladakh and Jammu say that they will come to India with all these subjects, make it possible for them to do so.

The same right which you are claiming for Kashmir may also be demanded by the people of Jammu and Ladakh. Let us proceed in a friendly spirit. Sheikh Abdullallah himself said about a month ago that he will have no objection if the people of Jammu and Ladakh really felt that they would go to India-I am not saying that you have it done immediately or you proceed in that way, but let it be possible for the people residing in those areas to make up their minds which way it will be good to proceed, and it will also be consistent with the same principles of self-determination which constitute the basic claims of Sheikh Abdullah, supported by the Prime Minister.

*(Lok Sabha debates, 7th Aug., 1952)*

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### 13. ABROGATE ARTICLE 370

*Atal Bihari Vajpayee*

“The Bill further to amend the Constituion of India be taken into consideration”.

Mr. Chairman, Sir, I have moved this Bill to amend Article 370 of the Constitution. Bills to this effect have been moved in every Lok Sabha. If you glance through the Constitution of India you will find that Article 370 has been included in the part of the Constitution which has been called by the framers of the Constitution as ‘temporary and transitional’. Part XXI of the Constitution is temporary and transitional. From the title itself it is clear that the articles and clauses under this Part were included in the Constitution due to some special circumstances and the framers of the Constitution wanted that these provisions should not become permanent parts of the Constitution.

I remember when this article was being discussed in the Constituent Assembly Maulana Hasrat Mohani had asked why Jammu and Kashmir was being discriminated against by including Article 370. Of course, this article does not give any special concession to Jammu and Kashmir. But it discriminates against the citizens of that State. It does not allow them to come on par with the citizens of that State. It does not allow them to come on par with the citizens of the rest of the country and that is why Maulana Hasrat Mohani had asked why this discrimination against Jammu and Kashmir. I want to quote from the reply given by Dr. Gopalaswami Ayyangar. He stated:

“This discrimination is due to the special conditions in Kashmir. That particular State is not to yet rip for this kind of intervention. It is the hope of everybody here that, in due course, even Jammu and Kashmir will become ready for the same sort of

integration as has taken place in the case of other States”.

Those Hon'ble members who were members of the old Lok Sabha might recall that whenever the question of abrogation of Article 370 was raised during the time of Pandit Jawahar Lal Nehru he also used to say that with the passage of time this article would also vanish. He also stated that this article was temporary. I remember he had once said that this would gradually erode. Pandit Nehru was clear in his mind that Article 370 would not remain a part of our Constitution permanently. But 21 years have passed since the Constitution was adopted, and this article is still there. If you look at this article you will find how unnecessary and useless this article has become. I quote: Notwithstanding anything in this Constitution,

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir”.

Article 238 is now no more in the Constitution. That Article has been dropped, because it related to class 'B' States. 'B' class States have disappeared from our map. They have no existence in the Constitution any more, nor is Article 238 found in the Constitution now. But this reference to Article 238 still continues in Article 370. It is further stated in Article 370 that:

“(b) the power of Parliament to make laws for the said State shall be limited to:

(1) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State”.

At that time India was referred to as a Dominion. Now our country is fully independent. Today India is not a Dominion, but in Article 370 the reference to Dominion continues. In this article there is a mention of Maharaja of Kashmir while royalty has been abolished in Kashmir. Previously there was a *Sadar-e-Riyasat*,

but now there is a Governor like in other States. But if any student looks into this article in the Constitution of India he would be unable to understand why it still continues.

Now a question could be asked as to why this insistence on removing this article. The first and foremost reason is that this article stands like a psychological barrier between Jammu and Kashmir and the rest of India. Why should a particular State have a special status? On the one hand, we say that Jammu and Kashmir is an integral part of India and there can be no two opinions about it, but on the other we have given it a special status. There is a Union List in the Constitution. This House can make laws about the subjects given under the Union List. But this is not the position with regard to Jammu and Kashmir. Recently we have passed the Twenty-Fourth Amendment to the Constitution and that amendment was supported on the ground that it established the supremacy of this House. It was stated that this House is supreme, that this House is even above the Supreme Court. But so far as the question of Jammu and Kashmir is concerned this House is not above the Legislature of Jammu and Kashmir. Why this contradiction? That is the reason why I have brought this amendment. It is now time to make it clear that so far as the question of subjects given in the Union List is concerned there would be no need to consult the Government of Jammu and Kashmir while framing laws about these subjects.

I do not know why such an amendment is not being brought forward from the Government side. It is true that there has been a change in the situation since the Constitution was framed: Jammu and Kashmir has come closer to the rest of India; the Auditor-General can audit the accounts there; the Election Commission's authority has been extended to the Jammu and Kashmir Stat; and several other social welfare measures are being applied to Jammu and Kashmir. But in spite of that the fact cannot be forgotten that Article 370, which was a temporary and transitional provision, still remains in the Constitution and it has become a cause of separation of Jammu and Kashmir from the rest of India. It is also provided in Article

370 that if any law has to be enforced in Jammu and Kashmir it would be done in consultation with the Legislature of that State. The Constituent Assembly was formed later. It decided in favour of a merger with India. That was the decision of the people, which is irrevocable. Jammu and Kashmir is an integral part of India. But no change has been effected in Article 370. I want that this change should be brought about. This process of change should have been initiated by providing that we are giving full authority to Lok Sabha to enact laws in this House regarding subjects included under the Union List.

### **The Psychological Barrier**

I had spoken of a psychological barrier. This barrier is not only psychological but to some extent physical as well. No citizen of India can purchase land in Jammu and Kashmir. Our President too had to face a lot of difficulty when he required land for a post office, because in Jammu and Kashmir only its 'subjects' are allowed to purchase land there. The word subject still continues to be used. Royalty has been abolished, but subjects continue. Whose subjects? Jammu and Kashmir is a part of the Indian Republic. But an old tradition continues, words and phrases are being repeated. Instead of removing the barrier it is being strengthened. It is being supported on the ground that if others are given the right to purchase land there the capitalist of India would go and purchase the entire land of Jammu and Kashmir. What a ridiculous idea! Article 370 is not necessary in the Constitution for this purpose. The purchase of land could be banned. I am talking of the Union List. The other matters would be left for the State Government. It can pass legislation and the right to purchase land or its denial would be under the jurisdiction of the State Government. However, I am of the opinion that every citizen of India should have the right to settle down, purchase land and start his or her business in any part of India. This is essential for emotional integration.

There is also an economic aspect Jammu and Kashmir. We find that the industrial development of the State has not been as it



should be. The enormous amount of money given to the State Government has also not been spent properly. The Central Government could not set up big projects in Jammu and Kashmir. It is now heard that a telephone factory is going to be setup in Srinagar at a cost of one or two lakh rupees. Education is free there. The youth are studying and coming out of the universities. They require employment. Industrialization is necessary to create employment. If capital and other resources are not available in the State capital could be invested there from India. Today nobody is prepared to invest money there. There are obstacles. Articles 370 obstructs it.

The pace of industrial development is not as fast as it should have been. Therefore, there is discontent among the educated section of the society and demonstrations are held from place to place. But anti-national elements take advantage of this discontent in Jammu and Kashmir. We should not forget that. If students go on strike, fight for their reasonable demands, or ask for employment the neighbouring Pakistan presents the issue in an anti-India manner. It presents every issue in an anti-India way. These problems exist in other parts of the country as well, but we will have to pay special attention to Jammu and Kashmir. We will have to accelerate the pace of economic development there. Power generation could be accelerated. There are certain aspects which could have been looked into by the Central Government, but it did not pay attention to it. I do not want to go into all that and this is also not the subject-matter of my Bill. All that I am saying is that so far as Jammu and Kashmir is concerned abrogation of Article 370, which separates the rest of India from Jammu and Kashmir, must be considered seriously and the process must start now. I want to quote the amendment I have given notice of and what method I have suggested therein:

“Notwithstanding anything in the Constitution the power of Parliament to make laws for the State of Jammu and Kashmir shall be limited to....” Limitation will be still there as before. But at present we cannot legislate without the concurrence of the

## ARTICLE 370 - A THORN

Government of Jammu and Kashmir even about subjects given under the Union List. I want this to be abolished.

- a) the matter in the Union List, and
- b) such other matters in the Concurrent and State List which, with the concurrence of the State, the President may specify.

Explanation: For the purpose of this article the Government of the State means the Governor of Jammu and Kashmir acting on the advice of the Council of Ministers of the State for the time being in office”.

I have given one more amendment. For the present we may give authority to Parliament to legislate about the subjects under the Union List, but after January 26, 1972 Article 370 should be abrogated; it should be made inoperative. The provision to make it inoperative has been made under this very article. I want to quote:

“Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that the article shall cease to be operative only with such exceptions and modifications and from such date as he may specify”.

The President, if he so desires, may make the entire inoperative. This would require the concurrence of the State Government of Jammu and Kashmir. But I do not think they will have any objection to giving their concurrence.

Today Jammu and Kashmir is facing a danger. The neighbouring country has an eye on it. It is quite possible that it may disturb the peace in the valley again by sending infiltrators. But the people of Jammu and Kashmir have full faith in the unflinching support of the entire people of India. The brave Jawans of our Army are ready to sacrifice their lives to protect Jammu and Kashmir. If our Jawans can sacrifice their lives for the sake of Jammu and Kashmir can't they have the right to purchase land there?

If this Parliament can sanction an amount of more than three hundred crores rupees during the last twenty years for the

## ARTICLE 370-A THORN

development of Jammu and Kashmir can't legislate for Jammu and Kashmir in regard to the subjects under the Union List?

So far it was said that this case was pending before the United Nations Organisation. Pakistan goes on raising it off and on. We should not touch Article 370, we should allow it to get eroded gradually. Now the position is that Pakistan has no right to speak on the question of Jammu and Kashmir. The people of Jammu and Kashmir are now aware what kind of treatment is being meted out by the military rulers of Pakistan to the inhabitants of East Bengal who have been in Pakistan since its inception, and a majority of whom are Muslims. I do not think that in view of this any sensible person in Jammu and Kashmir would like to say that he would prefer to be kicked under the boots of the Pakistani military dictatorship, leaving the status of equality prevailing in Indian democracy.

### **Withdraw Kashmir issue from U.N.**

Therefore it is essential that we should withdraw the question of Jammu and Kashmir from the United Nations Organisation. We should end whatever uncertainty remains about it. Pakistan has no claim over it. Pakistan is an aggressor in Jammu and Kashmir. The whole world knows what is the position of one-third of Kashmir occupied by Pakistan. In comparison to that Jammu and Kashmir forms a part of India in spite of so many shortcomings and uncertainties. IT has made progress. There is democracy. The people have decided their own fate. Free and fair elections are held and their own representatives are running the administration there. Their representatives are also sitting in this Parliament. I think the item has come to abrogate Article 370. Article 370 should be made inoperative from January 26 next and, before that, we should accept this amendment today providing that so far as the Union List is concerned this House will have the power to legislate about it.

*(Discussion of Sh. Atal Bihari Vajpayee in Lok Sabha on Article-370)*

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## 14. ARTICLE-370 DISCRIMINATES KASHMIRI'S

Mr. Speaker, Sir, I am grateful to the House for showing interest in my Resolution which makes a suggestion for abrogation of Article 370 of the Constitution. But that is not the only demand made in the Resolution. I would like to read out a portion of it :

"..... this State should be fully brought at par with the other States of India and for this purpose the House recommends that all necessary steps such as abrogation of Article 370 be initiated forthwith."

However, the entire debate has centred around Article 370. From one point of view this is good. Repeated discussion about it help this House and the country to make up their mind. From that point of view this discussion should be welcome

I am amazed to listen to country speeches during the discussion. This is not the first time when a plea has been made in the House for the abrogation of Article 370. My friend Shri Parkash Vir Shastri had presented a bill before this House in 1964 with the same objective. I have moved only a resolution in the form of a recommendation. Had his Bill been adopted it would have been mandatory. Speaking on that Bill my friend Shri S.M. Banerjee, who is not present in the house had said that Article 370 should be abrogated. Shri Sarju Pandey had also spoken on it . I want quote from Shri Pandey's speech :

"Therefore I want to say that if you want to do something about Kashmir, then today the right type of Resolution has come . It should have come much earlier, but let it be done now."

This is from the speech of Shri Sarju Pandey delivered in



1964.

I also want to quote the words of Shri Bannerji :

"Even after so many years no reason has been given in the House about not abrogating Article 370."

Professor Mukerji is not present in the House at the moment. It is a pleasure to listen to his speech . He is a learned man . But today I was surprised and felt sorry to listen to his speech . It appears that the Police of the communist Party has changed. Was the change brought about as a result of change in the police of the Soviet Union ? If it is consequent upon that change the House must ponder over it seriously.

What was right in 1964 cannot become wrong in 1968. If it was justified, essential and in the wider interest of the country and Jammu and Kashmir to abrogate article 370 in 1964 it could not be said today that Article 370 should not be abrogated. Dr. Lohia had voted in favour of Shri Parkash Vir Shastri's Bill and Shri Madhu limaye had also voted in its favour. I am reminding my friend Shri S.M.Joshi about this. He has said that he agrees with the spirit on my Resolution, but the work of national integration is very difficult, we will have to do it slowly.

### **There can be no limited Accession**

My Submission is that the work of national integration is a continuous process. This involves winning the hearts and minds of the people. And my objective in bringing this Resolution is the same be made infructuous, On the one hand, there is the special status of the State, and on the other this article discriminates against the people of that State.

I want to warn those people who are in favour of limited accession of Jammu and Kashmir to India that the people of Jammu and Kashmir would not like limited accession. They do not want to forego their rights to approach the Supreme Court. They would like free and fair conduct of elections. If the citizens of Jammu and Kashmir do not get the rights which are enjoyed by every citizen of

India they would resent it and raise their voice against it.

I am indebted to Bakshi Sahab who has referred to me the case of a Government employee there. I want to ask, can such a thing happen in any other State of India? If an employee does the work of the Employees Association would he be given notice? There is one Shri Abdul Hamid Afridi, Depty Excise Commissioner, who says :

"It has come to my notice that you are playing an active role in the activities of the Low Income Group Employees' Federation. A strict watch was being kept on your activities as result of which the undersigned and myself have come to the conclusion that you hardly pay any attention and time to Governmental work, because you are more inclined to these activities . Some of my colleagues have informed me that they have seen you pasting posters of the said Federation on the walls of houses and shops."

Do the employees of Jammu and Kashmir have no right to form associations ? Has action to be taken against them for this ?

**Shri Nambiar :** They are doing this work here. They are doing this here for the employees of the Central Government. Its counterpart is there. They are like brother and sister.....(Interruptions).

### **House Empowered to Recommended Deletion of Article 370**

**SHRI VAJPAYEE :** The situation is bad here, but not that bad. Even the Minister of Home Affairs would not support that if somebody is seen pasting posters he should be served with a notice. The employees of Jammu and Kashmir should be served not be treated in this manner. It is necessary to take some steps with a view to stopping such activities and for that I had made the suggestion that Article 370 be abrogated. The President can do it by issuing an order. I admit this should be done with the consent of the State Government. But this house can make its recommendation, can express its opinion that the time has now come to abrogate Article 370, which was a transitional and temporary provision of the Constitution. I regret to say that the Minister of Home Affairs

wants to put off the entire questions by describing this article as a bridge. Perhaps he has not understood the intention of the framers of the Constitution. If Article 370 would be considered a bridge between Kashmir and India.... (Interruptions).

**SHRI Y.B. CHAVAN:** I have not said that this is a bridge between Kashmir and India. I had said this constituted a bridge on the basis of which several articles of the Constitution were applied one after the other- a constitutional bridge for Jammu and Kashmir.

**SHRI VAJPAYEE :** The intention of the framers of the Constitution was quite clear - that Article 370 was for some time only. Pandit Nehru had said that this article would erode itself. Does this mean that it would continue to exist ? You can say that the time has not yet to come to rescind it completely, but it is unimaginable that Article 370, which is a temporary provision, could be made permanent.

**SHRI Y.B.CHAVAN :** Nobody has done so.

**SHRI VAJPAYEE :** And it should not be done also. Now it is said that the same situation continues as was prevalent when the Constitution was framed. One - third portion of Jammu and Kashmir continues to be under the occupation of Pakistan. The case of Kashmir was under consideration of the Security Council. If this situation did not change and in the meanwhile we abrogate article 370, Pakistan will make a hue and cry.

### **Appeasement of Pakistan**

I want to ask, are we continuing with this Article 370 for appeasement of Pakistan? It makes a hue and cry whenever you extend a new law there. Pakistan will always shout, but if the caravan of India's national integrity stops at Pakistan's shouting that would be the most unfortunate day for India. We cannot accept Pakistan as a party in the matter of Jammu and Kashmir.

My submission is that today this case before the Security Council. Pakistan is trying to open it afresh and it is, therefore,

essential to remove that psychological barrier which divides the people of Kashmir from us. Had the case of Kashmir not been before the Security Council, had Pakistan not made repeated attempts to raise that issue again and again, had some international powers not shown their unintelligent inclination to pat Pakistan in this case, perhaps there would have been no need to raise this demand. The case is before the Security Council and Pakistan has been making mischief creating a situation of uncertainty. To meet that situation we can take a step of abrogation Article 370.

I shall finish after making one more point. Now Kashmir is not more a princely State. The Maharaja of Kashmir is present in this House to serve the Republic of India after being elected by the votes of people. Nobody want to bring monarchy to Kashmir again. Zamindari has been abolished in Kashmir and nobody wants to reestablish it there. So far as the question of purchase of land is concerned whether the restriction on this is responsible or not is different question. But for that Article 370 is not necessary.

Outsiders can not purchase land in Arunachal . There is ban on the purchase of land belonging to tribals in Chhota Nagpur. But the consitution of India need not to be distorted for that as the work can be done by a Deputy Commissioner. We do not want that the people may go in very large numbers to purchase land in Jammu and Kashmir but if there is fear of land being purchased arrangements could be made in that regard. The continuance of article should not be supported on that ground.

### **No Two-Nation or Three-Nation Theory**

It is a basic fact that the people of Kashmir have merged with us of their own free will. I am prepared to welcome Sheikh Abdullah who stood up against the two-nation theory of Qaid-e-Azam Jinnah. But sometimes I feel that a three-nation theory is know being Propounded in Kashmir. He had fought the two-nation theory, but today he is describing kashmir as a seprate nation. My submission is that Kashmir cannot be a seprate nation.

Do you know that so far as the purchase of land is concerned even people belonging to Jammu are not allowed to purchase land in the Kashmir Valley?I have a name with me, that Dr. J.R.Sethi.



He is an eye specialist. He wanted to live in Kashmir after constructing his house. He asked for allotment of land for that purpose, but it was refused. He was allotted land in Jammu..... ( *Interruptions* ).

**SHRI GULAM MOHAMMED BAKSHI** : Vajpayeeji, this wrong.

**SHRI VAJPAYEE** : This is fact . A part from this I would like to draw the attention of the House to the fact that twenty thousand refugees had entered Jammu in 1947 from West Punjab. Please note that twenty thousand refugees had gone to Jammu from West Pakistan and settled there, but even today they have no franchise. Our own people have been made stateless in their own country. Indian citizens who were expelled from Pakistan, and are now settled in Jammu and Kashmir cannot cast their votes in elections. If you want to support this situation we will not tolerate it.

When Pakistan captured Muzaffarabad , Twenty thousand Hindus, including Sikhs, were forced to leave their homes. The Hindus of Muzaffarabad reached Srinagar. Muzaffarabad was a part of Kashmir province. The people from Muzaffarabad came to Srinagar, but they were not allowed to settle in Srinagar and were pushed to Jammu . We are not putting forth a communal demand. Communal behaviour is being shown in Jammu and Kashmir. Our officers who go to Jammu and Kashmir on official duty, officers who are appointed by the Minister of Home Affairs cannot cast their votes there. Their names cannot be included in the Voters' list there. How long will this situation continue? The question is not that of purchase of land, the question is of dismantling the walls of discrimination. to remove the Psychological barriers that have been created. I admit this cannot be accomplished through passing of law alone, but sometimes the need to put the seal of law also arises.....( *Interruptions* ).

**SHRI ABDUL GHANI DAR** : Army and police cannot rule the State.

**SHRI VAJPAYEE** : Nobody wants to be ruled by Army and Police. But those who praise Pakistan while living in India and

who want to cede a portion of India to Pakistan would not be tolerated and if need be they would have to be dealt with the help of Army and Police as well. After all why do we maintain the Army and the Police ?

### **Objective of Resolution**

Mr. Speaker, Sir, my only objective in bringing this resolution was to make up the mind of the House, to make up the mind of the country, and bring the problems of Jammu and Kashmir before this House. The Minister of Home Affairs is very clever. He avoided many questions so cleverly. The people of Jammu and Kashmir want a clean, honest and strong administration. We put Sheikh Abdullah at the helm of affairs earlier. Today Sheikh Abdullah is not there. After him came Bakshi Gulam Mohammed, but now he is an Hon'ble Member of this House. After Bakshi Saheb Sadiq become the Chief Minister of Jammu and Kashmir. I want to ask why this change is occurring so often ? One comes , another goes away; after all, why this confusion there?

**SHRI CHAVAN :** It is happening every where.

**SHRI VAJPAYEE :** There is a difference. We have to understand this difference. It is happening everywhere, but when there is a change in the Chief Minister at other places it does not become an international issue. When Chief Ministers assume charge at other places Pakistan does not get a handle to malign India. If there is a change in the Chief Ministers at other places it does not create uncertainty in the minds of the people. Therefore, New Delhi will have to ponder over it seriously and do something to provide an honest and good administration in order to stabilise the situation in Jammu and Kashmir and to fully satisfy those people who have thrown their lot with India so that they may lead their lives with dignity and equity in a democratic India.

Several Hon'ble members have appealed to me not insist on voting on the Resolution. I bow the good wishes of the House and seek your permission to withdraw the Resolution. Thank you.

*(Lok Sabha debates December 6, 1968, Sh. Atal Bihari Vajpayee while replying to the discussion on his Resolution seeking abrogation of Article 370 of the constitution)*

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## 15. CAN ARTICLE-370 BE ABROGATED? IF SO, HOW?

Jagmohan

It has sometimes been argued that it is not constitutionally permissible to abrogate this Article without the approval of the Constituent Assembly of the State. It is said that a plain reading of the Constitution makes the position clear in this regard. The relevant portion of Article 370 reads:

“Notwithstanding anything in the foregoing provisions of the article, the President may, by public notification, declare that this article shall cease to be operative.....

“..... Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues a notification.”

An essential prerequisite of the Presidential declaration is the recommendation of the Constituent Assembly. In other words, even if the Union Government decides to abrogate this Article, it cannot constitutionally do so by itself as this would involve positioning of the State's Constituent Assembly and getting its recommendations. The amending powers under Article 368 of the Constitution would also not help.

On the face of it, the aforesaid argument is impressive. But no provision of the Constitution can be read in isolation. Article 1 is of far more fundamental importance. It reads:

1. Name and Territory of the Union. India, that is Bharat, shall be a Union of States.
2. The States and territories thereof shall be as specified in the First Schedule.
3. The territory of India shall comprise: (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.”

Jammu and Kashmir is the 15<sup>th</sup> State in Schedule 1 of the Constitution, and Article 1 applies to it in its entirety. On the other hand, Article 370 is transitional. The very heading of part XXI of the Constitution reads: "Temporary, transitional and framed, the understanding was that it would stay for a short time and cover the transitional period. Since the States's Constituent Assembly no longer exists, the question of its consent under Article 370 does not arise. Consent of a dead body or a non-existent body has no meaning. The Constitution can, therefore, be amended under Article 368 by the Union Parliament which represents the people of the State also. Thereafter, the aforesaid proviso requiring the recommendation of the Constituent Assembly could be deleted. After this deletion has been carried out, the President can make the necessary declaration and Article 370 would stand abrogated.

Whenever there is any incompatibility between one provision of the Constitution and another, the more fundamental provision would prevail. The Courts, while interpreting the Constitution, would have to give due regard to the changed circumstances, and the overall national objective for which the Constitution was framed. Article 1, as pointed out above, is of basic importance. It relates to the territorial integrity of the country. No State has any right to secede, unlike the States in the USSR. The territorial and political matters pertaining to the entire country are the concerns of the Union Parliament, and it has the effect of undermining the territorial integrity of the country.

The current situation in Kashmir shows that Article 370 has created a separatist psyche and thus threatened the territorial integrity of the Union. The Union Parliament, therefore, must act. And the Courts, when called upon to interpret the Constitution and reconcile the provisions of Article 1, Article 368, and Article 370 must accept the argument in favour of the territorial integrity and not interfere with the Parliament decision to delete Article 370, particularly when this Article is being use as an instrument of injustice, and the fundamental objective of the Court itself is to



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ensure justice and end unjust situations. In other words, if the Court makes a creative and dynamic interpretation of the Constitution, then it would certainly uphold deletion of Article 370 after its sub-clause has been deleted by the constitutional amendment under Article 368.

Provisions of Article 355 of the Constitution of India are also of crucial significance. This Article casts on the Union of India the duty to protect the States against external aggression as well as internal disturbances. If Article 370 stands in the way of the Union of India in discharging this paramount constitutional duty, it must go. In the present context, when Jammu and Kashmir has become vulnerable to both external aggression and internal rebellion, Article 370 is playing no small part in enabling the hostile elements to cause internal disturbances and facilitating external aggression, it is incumbent upon the Union Government to take steps to delete this Article to effectuate the duty cast upon it by Article 355. Thus, if Article 370 is read along with Article 1 and Article 355, an amendment of the Constitution under Article 368 to delete the proviso to Article 370 would be perfectly valid, and after the said deletion of the proviso, the President's declaration deleting the entire Article 370 would make the position absolutely clear.

It may also be pointed out that it is possible to take away the teeth of Article 370 by deleting Article 35A. If this deletion takes place, Articles 19(1)(e) and (g) will come into full play. Articles 19(1)(e) and (g) declare:

“All citizens shall have the right

- (a) to reside and settle in any part of the territory of India; and
- (b) to practice any profession, or to carry on any occupation, trade or business.”

Part III of the Indian Constitution is already applicable to the State of Jammu and Kashmir. With unrestricted application of Articles 19(1)(e) and (g), any Indian can settle in Jammu and Kashmir, and all irrational, unjust and anachronistic provisions of the Jammu and Kashmir Constitution in regard to the rights of

settlement and citizenship, which are incompatible with the Indian Constitution, would go.

The defenders of the restrictions regarding State subjects have sometimes pointed out that these restrictions were imposed not by the State Government or by Sheikh Abdullah after 1947, but by the Maharaja on the representation of the Dogra and Pandit Sabhas in 1893. This plea is totally misplaced. We are not being guided by the values, thinking and circumstances of 1893, but by the present-day aspirations and fundamental principles of the Indian Constitution. What is not in the interest of justice must go, whenever be its background. The unfairness of these restrictions were noted as far back as 1931-32, when Bertrand Glancy, Chairman of the Grievances Committee, observed in his report: "The present definition of the State subjects appears to be unduly rigid; domicile in the State for a thousand years cannot, according to this definition, qualify a man. It would seem both unfair and inexpedient to deny the right to franchise to a man who has so far identified himself with local interests as to make his domicile in the State over a consecutive period of five years".

These restrictions were continued, and given constitutional protection, with less than honest intentions. It was intentionally 'forgotten' that the restrictions were primarily imposed by the Maharaja to keep the British away from Kashmir.

In the case of displaced persons about whose plight I have made brief comments earlier in this chapter, the Supreme Court recognized the injustice that was being done to them but could not provide any relief on account of Article 370 and the provisions of the State Constitution and the laws made thereunder. I reproduce below the relevant portion of the Supreme Court's observations:

"The persons who migrated from West Pakistan to the State of Jammu and Kashmir in the wake of 1947 partition and have settled down in the State of Jammu and Kashmir and who are citizens of India and who also have the right to participate in elections to Parliament, have very anomalous right within the State. They are

not entitled to be included in the electoral rolls of the State Assembly, they are not even entitled to be elected to a village Panchayat, they are not even entitled to purchase any land and they are also not entitled to be appointed to any service under the State Government. All these denials and deprivations are the consequence of the definition of a permanent resident under Section 6 of the Jammu and Kashmir Constitution. It is to be noticed here that these provisions are not open to challenge as inconsistent with the right guaranteed by Part-III of the Constitution of India because of the Constitution Order, 1954, issued by the President of India under Article 370(1)(d) of the Constitution by which Article 35 (A) was added to the Constitution in relation to the State of Jammu and Kashmir. The net result is that these persons, though citizens of India and entitled to various fundamental rights guaranteed by the Constitution, are not in a position to enjoy many of these rights within the State of Jammu and Kashmir though they are domiciled in that State for over 40 years.

In the circumstances, in view of the peculiar constitutional position obtaining in the State of Jammu and Kashmir, we do not see what possible relief we can give to them. All that we can say is that their position is anomalous and it is up to the legislature of the State of Jammu and Kashmir to take action to amend legislations such as the Jammu and Kashmir Representation of the People Act, the Land Alienation Act, the Village Panchayat Act, etc. so as to make the persons, who have migrated from West Pakistan in 1947 and who have settled in the State of Jammu and Kashmir since then, eligible to be included in the electoral rolls, to acquire land, to be elected to the Panchayat, etc., This can be done by suitably amending the legislations without having to amend the Jammu and Kashmir Constitution. In regard to providing employment opportunities under the State Government, it can be done by the government amending the Jammu and Kashmir Civil Services rules. In regard to admission to higher technical educational institutions also, the government may make these persons eligible by issuing appropriate executive directions, without even having to introduce any legislation. The petitioners have a justifiable grievance. Surely

they are entitled to expect to be protected by the State of Jammu and Kashmir.”

The suggestions of the Supreme Court that such unfair laws might be amended by the State Legislature, have been ignored. Unfortunately, the underlying motivation of the State rulers is not justice but playing petty politics, creating little hegemonies and keeping the poor and the resource less of different regions in a state of perpetual confusion and conflict.

A parallel is sometimes drawn to restrictions imposed by the Himachal Pradesh Government on purchase of land in the State by outsiders. This parallel is also misconceived. The Himachal Pradesh law, which was enacted by the Central Government when Himachal Pradesh was a Union Territory, is primarily designed to protect the interests of the poor and ignorant cultivators. It is open to constitutional scrutiny under the Indian Constitution and is subject to fundamental rights. The Courts can strike down any provision which does not qualify under the clause of reasonable restrictions. Moreover, the restriction is not absolute. The purchase of agricultural land can be made with the permission of the State Government. In the case of Jammu and Kashmir, the bar is absolute and even the Supreme Court cannot intervene, as has been pointed out in the above-quoted judgment.

On August 21, 1962, in reply to Pandit Prem Nath Bazaz's letter concerning Article 370, Jawaharlal Nehru wrote:

“As a matter of fact, much has been done in spite of the Article in the Constitution which is supposed to give a special status to Kashmir and gradually what little remains will also go. The question is more a sentimental one than anything else. Sentiment is sometimes important but we have to weigh both the sides and I think no change should be made in the matter for the present”.

This letter shows that Nehru himself did not rule out future change with regard to Article 370. And so far as sentiments are concerned, it is quite clear by now that they have operated in the opposite direction and strengthened the separatist and subversive



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psyche which, in turn, have threatened the very unity psyche which, in turn, have threatened the very unity and integrity of the country. It is time that the seed that has given birth to an unhealthy plant is pulled out from its roots.

Retention of Article 370 has sometimes been justified by saying that it is not a wall but a tunnel. On December 4, 1964, Gulzari Lal Nanda, Union Home Minister, said, "Through this tunnel, a good deal of traffic has already passed; more will pass now." A few days later, M.C. Chagla, Education Minister, observed, "Through Article 370, the whole of the Indian Constitution could be applied to Jammu and Kashmir".

It may be an ingenious position to take in theory, but it ignores the stark reality that the gates of this tunnel are manned by someone else. And what happens if this tunnel is blocked, as was done after 1975. Even otherwise, does it make any sense to go through a precariously built tunnel when a straight, firm and wide avenue is available?

An argument has also sometimes been advanced that if Article 370 is abrogated, Kashmir's link with India would stand terminated. This argument is too legalistic to have any meaning in practice. Would India become a colony again if the British Parliament were to amend the Indian Independence Act retrospectively, which it is legally competent to do?

The above argument also ignores Article 1 and other provisions of the Constitution of India. It assumes that, after deletion of Article 370, nothing else would be added by way of rectification or clarification or elaboration. It also assumes that India today is what the British Parliament wanted it to be, and Kashmir was not a part of India earlier. It gives precedence to the narrow technicality of law over the basic reality that is India-India from Kashmir to Kanyakumari that has existed for thousands of years in the minds and hearts of its people, the India that its intellect and emotions, its philosophy and poetry, its life and literature had given birth to.

It should be evident that Article 370 and its by-product, the

separate Constitution of Jammu and Kashmir, must go, not only because it is legally and constitutionally feasible to do so, but also because larger and more basic considerations of our past history and contemporary life require it. This Article and its accompanying paraphernalia need to be abrogated. It serves as an instrument of perpetrating injustices and inequities. It facilitates the growth and continuation of corrupt oligarchies. It fans and feeds the forces of parochialism and obscurantism. It implicitly recognizes the two nation theory. It acts as a breeding ground for separatist emotions. It puts false notions in the minds of the youth, and it creates narrow grooves and narrow loyalties. It gives raise to regional tensions and conflicts, and even the autonomy assumed to be available is not attainable in practice. The distinct personality and cultural identity of Kashmir can be safeguarded without this Article. It is socially regressive and causes situations in which women lose their rights if they marry non-State subjects and persons staying for over forty years in the State are denied not fit into the reality and requirements of India and its vast and varied span. What India needs today is not petty sovereignties that would sap its spirit and aspirations and turn it into small 'banana-republics' in the hands of 'tin-pot dictators', but a new social, political and cultural crucible in which the age-old traditions of pluralism and tolerance, of truth and rectitude, of fairness and justice, and of compassion and catholicity, are melted, purified and moulded into a vigorous and vibrant set-up which provides real freedom, real democracy, and real resurgence to all.

*(Taken from Sh. Jaghmohan's book "My Frozen Turbulence in Kashmir")*

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## 16. ON KASHMIR

### A 'TEMPORARY PROVISION' PERSISTS EVEN AFTER 60 YEARS ARTICLE-370

Gopal Sachar  
*Senior Journalist*

No other provision of the Indian Constitution has been so much controversial as Article 370. It was essentially an offshoot of painful communal division of India in 1947. This has come into being in wake of mysterious Ceasefire with invader Pakistan in Jammu and Kashmir, which was of course the result of behind the scene of this division.

This provision has done great harm to the unity and secular fabric of the country, moreso, to the people of Jammu and Kashmir.

It was surprising that this Article still existed in the Statue Book even after 60 years although it was incorporated as a Temporary measure. And the then Prime Minister, Shri Jawahar Lal Nehru had assured the critics that it would wither away with the passage of time.

The fears of the adversaries of this step have come to be a bitter reality for the entire country, especially the people of Jammu and Kashmir. Because of this approach the religious fundamentalism resulted in persecution of the minorities. First of all under communal mindset the Hindu-Sikh migrants from enemy held areas of Muzaffarabad who entered in the Valley, were pushed towards Jammu and gradually other minorities were also coerced to leave the Valley and ultimately the exodus of Kashmiri Pandits and others in 1989.

This migration has resulted in less than one percent presence of the minorities left in the valley of Kashmir although their percentage at the time of accession of this State with Indian union was about 14 percent.

The problems of refugees and those from POK still continue hang on. The refugees from adjoining Pakistan who entered the border area of Jammu have been denied even the rights of citizenship and other facilities for their rehabilitation unlike other parts of the country. Similarly, the problems of displaced persons from Pak-occupied Kashmir still remain to be settled, so much so, no claims of their properties left behind were registered.

This provision discriminates between Indian even on gender basis. Any girl born in this State loses many of her rights if she is married outside the State. But if, a man marries at places in the rest of the country, the lady does not face any problem. An amazing part of this discrimination can be judged from the fact that a soldier from outside the State comes here and scarifies his life while fighting the terrorists and invaders but his children or any other relation cannot have even an inch of land to stay here or have any other facility.

This provision provided unbridled powers to the rulers who took over the authority in wake of the Accession of the State with Indian Union.

The worst affected was the democratic polity. Taking advantage of the Article 370 the ruling leaders formulated the Constituent Assembly in 1951, for which the elections were held in a hush hush manner. This process was how much ridiculous can be judged from the fact that under the stewardship of Sheikh Mohammad Abdullah the entire House of 75 members was packed with one party alone. The only then opposition party, the Praja Parishad led by Pt. Prem Nath Dogra was in the fray. But this party was forced to boycott the polls as 42 nomination papers out of 59 were rejected on frivolous grounds. And some others were threatened with dire consequences if they did not withdraw. Amazingly out of 75 members, as many as 71 were declared elected unopposed. There was polling in only two reserved constituencies having the procedure of electing two members viz one general category and one scheduled caste. Even in these two double members constituencies the polling was just a drama.



Then this process of unopposed elections continued even in 1957 Assembly Elections when out of 75, as many as 42 members for the assembly were declared elected unopposed.

These unopposed victories for majority of the Assembly seats continued till 1972, when for the first time the elections of the State Assembly were conducted under the jurisdiction of the Election Commission of India. In this election only five members of then ruling Congress were declared elected unopposed. It may be mentioned here that the NC was converted into INC in 1965 during the time of Shri Lal Bhadur Shastri. Earlier, the Congress operated in this State under the banner of National Conference.

How the democratic process was made a mockery by the National Conference and its fellow traveler viz the Congress in this part of the country, is a sordid story. Many volumes can be written about this long foul play with the democratic process.

An amazing part of this wrong was that the men in power always tried to create wedge between the people of the regions especially those of the Jammu and that of the Valley. By playing foul in Jammu, the Kashmiris were told that if there is fairness in the polls, the RSS would dominate the scene but outside the Valley an impression was given that in case of fair elections, fundamentalists and Pakistanis would be strengthen there.

But the students of the history know well that after the independence the voices of secessionism and fears of separatism were bigger in south than in Kashmir. But the free flow of Indian Constitution and fairness in democratic process in the south resulted in strengthening the unity of the people and even secessionist outlook was absorbed in the mainstream to become a party in power.

Many observers are rightly of the view that if there has been free flow of Indian laws and the electoral process was allowed to work with fairness in this State too, there would have been no problem of any secessionism.

This belief gets credence from the elections of 2002 when during the NDA rule it was for the first time that the Government

of this State was changed through ballot and despite threats by terrorists and the secessionists, the people participated in this democratic process in a big way.

Looking back over the history of this State that the Kashmiris who took to arms against Pakistani invaders in 1947, how those very people in 1989 took to arms against India but for whose fault. It was the result of the follies of the ruling leaders who played havoc with the democratic process so much so, even the local bodies and the Panchayats have been made a show of big mockery during all these years. The provisions of Indian Constitution including 73<sup>rd</sup> /74<sup>th</sup> amendments empowering these basic democracies have not applied to this State even after repeated recommendations by the experts and assurance by no less a person than the Prime Minister, Dr. Manmohan Singh, who at a gathering at Udhampur on April, 13, 2007 had given the impression that these amendments would soon work in this part of the country also.

Taking advantage of the Article 370 the ruling leaders of the Congress have created a bad blood between the people of one regions. Jammu has been denied of its due share in the Lok Sabha as also in the State Assembly, in addition to other spheres of life.

As per the official figures the number of voters during the 2002 and also in 2008 Assembly elections, was almost equal and the geographical area of Jammu is almost double to that of Kashmir Valley but Jammu has been given only two Lok Sabha and 37 Assembly seats as against three Lok Sabha and 46 Assembly seats to the Valley. This obviously is resulting in a sense of political subjugation in Jammu. This feeling has led to great resentment as the National Conference Government in 2001 got amended the State Constitution putting an embargo that there would be no delimitation of Assembly Constituencies till 2026.

This sense of deprivation has been multiplied as the Congress despite its promises did not move ahead in this regard even it was their major election promise at the time of 2002 and 2008 elections.

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The Article 370 has also badly affected the industrial growth of the State because in the prevailing laws the outside investment by the Industrial houses is quite difficult one. The absence of industrial growth is resulting in increasing unemployment.

Many labour and others laws enacted by the Parliament beneficial for the labour classes have not been extended to this State. In this regard, it sounds ridiculous that the representatives of this State in the Parliament take part in the adoption of laws for the country but these laws do not apply to Jammu and Kashmir.

In short this provision has caused more problems than any good. Observers of Kashmir scene including servers of Sheikh Mohd now agree that if there had been the jurisdiction of the Indian Constitution, even that of Supreme Court in the State, Sheikh Mohd Abdullah could not be deposed and jailed in 1953. And also the great leader of opposition in the Parliament, Dr. S P Mukerji could not be detained and had died in circumstances shrouded in mystery at Srinagar on the night of 22/23 June, 1953.

As a journalist, I would recall that prior to the extension of jurisdiction of Supreme Court of India in 1953, the then Prime Minister of the State, Bakshi Ghulam Mohammad had banned the entry of a Magazine, The Film India, Mumbai for writing an Article against the ruling leaders but its Editor, Babu Rao Patel, had no remedy to challenge this order of the State. But in 1976, the State Government had banned the entry of Hind Samachar and some other papers for their writings against the ruling leaders, its Editor, late Lala Jagayat Naryan approached the Supreme Court and the State Government had to eat a humble pie because by then the jurisdiction of the Supreme Court was extended to this State.

In short, it is travesty of the circumstances the certain leaders of Kashmir have not changed their mindset and have not taken any lesson from the past and they are still harping for retaining of this provision and talking about the reversal to the position of 1953, which had left a sad trail of events.

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## 17. ARTICLE-370 IS A PSYCHOLOGICAL BARRIER

Arun Jaitley

The fifth Working Group has been constituted following the statement of Hon'ble Prime Minister at the Round Table Conference held on May 25, 2006 at Srinagar on the subject of "Strengthening Relations between the State and the Centre". From the subject matter it is clear that this Group has been constituted to strengthen the relationship between the State and the Centre and not to create any further distancing in the constitutional relationship.

Various proposals have been suggested by honorable members of the Group with regard to the Centre-State relations in the context of Jammu & Kashmir. These proposals are broadly categorized in the following four sub heads:

- (a) Self-rule for the people of Jammu & Kashmir.
- (b) Autonomy for the people of Jammu & Kashmir in the nature of pre-1953 status.
- (c) Maintenance of the current status-quo.
- (d) Abolition of Article 370 and full integration of State of Jammu & Kashmir into India.

The Bharatiya Janata Party is categorically committed to the following two proposals:

- (1) Abolition of Article 370 and complete integration of State of Jammu & Kashmir into the Indian Union.
- (2) Decentralisation of powers within the State to regions such as Jammu and Ladakh.

What must be the criteria to determine as to which of the above four options strengthen the Centre-State Relations.



We are today in the 60th year of our independence and the 57th year since the Constitution of India was adopted and implemented. The incorporation of Article 370 in the Indian Constitution was a Nehruvian misadventure. It is for the people of India, including those of Jammu & Kashmir, to pause and look back and objectively decide whether Article 370 has served the cause of the nation or the people of the State or has it at all strengthened national integration? Has Article 370 and the concept of separate status and identity resolved the problems which it was intended to resolve or has it created additional problems? The experience of the past 57 years reveals that the journey of Article 370 has evolved from a demand of a separate status to separatism. It is Article 370 and the ideology which produced it that share the blame for this unfortunate evolution.

Article 370 was a psychological barrier between a constituent State and the Indian Union. It continued to act as a political and psychological barrier. It prevented the economic development of the State in as much as it was a deterrent for potential investors.

The State of Jammu & Kashmir is strategically located on the borders of Pakistan. Pakistan has never reconciled to the fact that Jammu & Kashmir is an integral part of India. Because of Pakistan's armed aggression in 1947-48, India lost 1/3rd of the territory of Jammu & Kashmir to Pakistan. The unanimous resolution of India's Parliament in 1994 records that Pakistan-occupied Kashmir is an integral part of India. The Indian nation is committed to the restoration of that part of Jammu & Kashmir into India.

Not reconciled to the integration of Jammu & Kashmir into India, Pakistan has attempted conventional wars with India in 1965 and 1971. Its attacks were repelled and Pakistan paid a high price by its own division in 1971. Once fully satisfied that Pakistan could never annex any part of Jammu & Kashmir away from India through conventional warfare, Pakistan, in the late 1980s, engineered an unconventional war in the form of cross-border terrorism in the State of Jammu & Kashmir, which continues unabated. The facts

of recent history are not unknown. Terrorist training camps have been set up; large scale attacks have taken place in India. Pakistani Government, its Inter-Services Intelligence and various terrorist groups operating from its soil have fomented trouble in Jammu & Kashmir and other parts of India. It is obvious that the days of re-drawing the geographical boundaries are over where no country can barter away or give any part of its territory. It's concern for its sovereignty does not permit it to do so. The Indian State had no option but to face both conventional and the unconventional attempts towards destabilisation. In a bid to fight terrorism, India has had a very high price to pay. We lost valuable lives of innocents as also security personnel. A large part of our national budget is being spent towards maintenance of internal security against terrorism. The innocent people of Jammu & Kashmir have been deprived of the benefits, which tourism and industrial growth would otherwise have conferred on the State. Investors do not invest in terrorist-infested areas. Tourists do not visit insecure areas. Police action and security measures used against terrorists at times result in alienating the local population, which is a result of by police actions against terrorists. Terrorism, therefore, creates a social divide. Such a divide alienates and misleads the emotional people who then start believing in, romanticising and even' clamouring for self-determination.

Article 370 perpetuated a psyche that Jammu & Kashmir has a special relationship with India and is not fully a part of it. It sent a signal both to terrorists and Pakistan that its full integration could be prevented. The psyche of separate status was catalysed by terrorism in order to evolve amongst some misled sections into a demand for an independent State. Article 370 did not prove a remedy for any of the problems it tried to resolve. The historical events which followed the incorporation of "Article 370 established that the provisions itself became a problem rather than the solution.

What are the real problems of the people of Jammu & Kashmir?

We regard the following as some of the real issues of the people of Jammu & Kashmir, which require to be resolved:

- 1) Security to the people of Jammu & Kashmir through elimination of terrorism.
- 2) Economic development of the State.
- 3) Correction of regional imbalances in the State.
- 4) Benefit to the people of the State in terms of an environment of economic development in the country including creation of job opportunities.
- 5) Grant of citizenship rights to the refugees from West Pakistan who have settled in the State; payment of compensation to the refugees from Pakistan occupied Kashmir, numbering approximately ten lakhs.,
- 6) Rehabilitation of the displaced Kashmiri Pandits back in the Valley.

If these above problems are to be attended to and resolved, the fundamental question is: Has Article 370 anything to do with the resolution of these problems? Is further dilution of Article 370 into further autonomy going to resolve any of the problems mentioned above? Is there any nexus of the above problems with the kind of solutions that are being suggested? The unequivocal answer to the above is 'NO'. The above problems can be solved only and only if there is peace and tranquillity, elimination of terrorism, an end to regional disparities, grant of citizenship rights to refugees, rehabilitation of the displaced Kashmiri Pandits back in the Valley and in providing a comfort level to both local, outside and even foreign investors that Jammu & Kashmir is heaven for investment and economic development.

### **The Constitutional Position**

The Indian Constitution is federal in character. The powers mentioned in the Seventh Schedule in the Union List relate only to the legal competence of the Centre and the Union Legislature. The powers mentioned in the State List are within the domain of the State Legislatures and the State Governments. The powers in the

Concurrent List are under a twin jurisdiction, with a primacy to the Centre. In the context of the State of Jammu & Kashmir, the Union List has been substantially depleted to include only certain limited powers. All other powers are with the State List. The Concurrent List does not exist in the context of the State of Jammu & Kashmir. List-I, Entry 97 of the Union List deals with the residuary powers, i.e. powers not defined in a specific manner in the other two lists, viz., List II and List III. For the whole of India, residuary powers are within the domain of the Centre. In the State of Jammu & Kashmir the residuary powers are within the exclusive domain of the State. The laws made by the Centre are not automatically applicable to the State of Jammu & Kashmir. They need a concurrence of and ratification by the State Government/State Legislature.

Is the problem of the State of Jammu & Kashmir relatable to the inadequacy of the legislature of the State? Is any problem of the State on account of this so-called inadequacy? The honest answer has to be 'NO'. Compared to the rest of India, the power with the State Government and the State legislature is overwhelming. The federal character of the Indian Constitution leans in favour of the Centre, but leans entirely in favour of the State in the case of Jammu & Kashmir. This is an anomaly created by Article 370. Has the existence of this lop-sided power not created a separate psyche amongst the sections of people both across and within the border? Has the inadequacy of any power been felt in the governance of the State of Jammu & Kashmir either by the legislature or by the State Government? Obviously not. Those who are thus suggesting either continuation of this present status-quo or the grant of more power with autonomy and pre-1953 status or self-rule are not intending to do so to resolve any of the problems confronting the State. The intention is to exploit the emotive thinking of a section of people and further create a separate psyche through the onward journey of separate status to separatism. History will not forgive those who are indulging in a skewed analysis, blinding themselves to the existing problems, suggesting solutions, which are a disease worst than the remedy, and in this process, weakening the sovereignty of India. The Bharatiya Janata Party rejects this thought



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in its entirety and reaffirms its often-stated position for repeal of Article 370 and the integration of the entire State of Jammu & Kashmir into India as the only solution. We believe that the people of the entire country should be entitled in the interest of national integration, a right to permanent residence and to live in any and every region of India equally.

Let us not forget the lessons of history. Article 370 appears in Part XXI in the Constitution of India. The said part deals with Temporary, Transitional and Special provisions. Shri Gopalaswamy Iyyengar while moving the Bill for incorporating Article 370 (Article 306 A in the Draft constitution) had referred to Article 370 as an "interim" and transitional provision. He hoped that the provision itself will wither away and had referred to Article 370 as an interim and transitional provision. Faced with criticism across the country our first Prime Minister, Pandit Jawaharlal Nehru had emphasised the transitional character of this Provision by confirming "Yeh ghiste ghiste ghis jayegaa. Even here, Pandit ji's statement on Jammu & Kashmir was belied by subsequent events. The provision has not withered away. Not only are there demands for its permanency but for further dilution of the relationship of the State with the Indian Union. All these proposals do not strengthen the relationship of the State and the Union. They are intended to destroy that relationship in its entirety.

### **Regional Imbalances**

There are different regions in the State of Jammu & Kashmir. Ever since Independence, the State has been administered predominantly by elected representatives from Kashmir Valley, with marginal participation of Jammu and Ladakh region. This has perpetuated discrimination in governance against both Jammu and Ladakh region. To deflect the criticism against this discrimination, a larger issue of injustice to the people of Kashmir is raised by certain interested persons. The last available data of the Indian population-living below poverty line is available for the year 1999. A national average of 26%, of the Population in 1999 lived below the poverty line. In Jammu & Kashmir this figure is 3.6%. This is

attributable, amongst other factors, to a large central assistance in the State. The per capita Central assistance in Kashmir was Rs.3000 annually, as against Rs.300 in the other backwards States like Bihar a few years ago. Even though the accuracy of the Census figures in Jammu & Kashmir have been disputed, the population of the two regions of Kashmir and Jammu is not substantially different. Kashmir's population is only marginally higher than that of Jammu. Despite this, there is large-scale discrimination in the matter of public employment. About 3.3 lakhs out of a total 4.5 lakhs government employees and semi-govenunent employees in the State come from the Kashmir Valley. Jammu and Ladakh regions are grossly under-represented. Ladakh's Representation in the civil secretariat is only 0.68 percent. The unemployment figures of Jammu & Ladakh are far higher than Kashmir - over 69%. No Delimitation of constituencies in the State is being undertaken presently. In the Assembly, the Kashmir region is represented by 46 members and the Jammu Province by 37 members. Only 4 members are from Ladakh. This is despite the fact that the number of registered voters in the Jammu region is 30,59,986, which is higher than the number of voters in Kashmir, which stands at 28,85,555. If an analysis is made of the money spent on developmental activities amongst the three regions, the discrimination against Jammu and Ladakh becomes more palpable. There is a strong sense of discrimination prevalent in the Jammu and Ladakh regions. It is, therefore, important and necessary that this Working Group suggests methodology of de-centralized governance in the regions of Jammu and the Ladakh. A possible option can be to set up constitutionally-empowered Provincial Councils in these two regions. These Provincial Councils should have financial and legislative jurisdiction in relation to developmental activities.

*(On Sept. 2, 2007 a note by Sh. Arun Jaitley, Member of Parliament & General Secretary of the Bhartiya Janta Party addressed to Justice (Retd.) Sageer Ahmed, Chairman, the working group on strengthening Relations between the State & Centre )*

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## EXTRACTS FROM THE TREATIES AND AGREEMENTS

### APPENDIX - I

#### *TREATY BETWEEN THE BRITISH GOVT. & THE STATE OF LAHORE, MARCH 9, 1846*

##### **Article 1 :**

There shall be perpetual peace and friendship between the British Government on the one part, and Maharajah Dhuleep Singh, his heirs and successors on the other.

##### **Article 2 :**

The Maharajah of Lahore renounces for himself, his heirs and successors, all claim to, or connection with, the territories lying to the south of the River Sutlej, and engages never to have any concern with those territories or inhabitants thereof.

##### **Article 3 :**

The Maharajah cedes to the Honourable Company, in perpetual sovereignty, all his forts, territories and rights in the Doab - or country, hill and plain situated between the River Beas and Sutlej.

##### **Article : 4**

The British Government having demanded from the Lahore State, as indemnification for the expenses of the war, in addition to the cession of territory described in Article 3, payment of one and half crore of rupees, and the Lahore Government, being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment, the Maharajah cedes to the Honorable Company, in perpetual sovereignty, as

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equivalent for one crore of rupees, all his forts, territories, rights and interests in the hill countries, which are situated between the Rivers Beas and Indus, including the Provinces of Cashmere and Hazarah.

### Article 5 :

The Maharajah will pay to the British Government the sum of 50 lakhs of rupees on or before the ratification of this Treaty.

### Article 12 :

In consideration of the services rendered by Rajah Golab Singh, of Jammoo, to the Lohore state, towards procuring the restoration of the relations of amity between the Lahore and British Governments, the Maharajah hereby agrees to recognise the independent Sovereignty of Rajah Golab Singh, by sepearate Agreement between himself and the British Government, with the dependencies thereof, which may have been in the Rajah's possession since the time of the late Maharaj Khurruck Singh, and the British Government, in consideration of the good conduct of Rajah Golab Singh, also agrees to recognise his independence in such territories, and to admit him to the privilages of a sepearate Treaty with the British Government.

Done at Lahore, this ninth day of March, in the year of Our Lord one thousand eight hundered and forty six, corresponding with the 10th day of Rubbee-ool-awul, 1262 Hijree, and ratifies on the same date.

(Sd.) **H. Hardinge**

(Sd.) **Maharajah Dhuleep Singh**

Bhaee Ram Singh

Rajah lal Singh

Sirdar Tej Singh

Sirdar Chuttur Singh Attareewalla

Sirdar Runjore Singh Majeethia

Dewan Deena Nath, Fuqeer Noorooddeen



## APPENDIX - II

*TREATY OF AMRITSAR MARCH 16, 1846*

The Treaty between the British Government on the one part and Maharaj Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B, one of her Britannic Majesty's most Honorable Privy Council, Governor General of the Possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person-1846.

**Article 1:**

The British Government transfers and makes over for ever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated on the eastward of the River Indus and the Westward of the river including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

**Article 2:**

The eastern boundary of the track transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

**Article 3:**

In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs

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of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current years, A.D., 1846.

### Article 4:

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

### Article 8:

Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Article V, VI, VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

### Article 9:

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

(Signed) **H. Hardinge (Seal)**

(Signed) **F. Currie**

(Signed) **H.M. Lawrence**

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## APPENDIX - III

### *INSTRUMENT OF ACCESSION*

*Instrument of Accession Executed by Maharajah Hari Singh on October 26, 1947*

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State

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may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jamtnu & Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu & Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose. but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

**Hari Singh**

Maharajadhiraj of Jammu and Kashmir State.

**ACCEPTANCE OF ACCESSION BY THE GOVERNOR GENERAL OF INDIA**

*I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.*

*Mountbatten of Burma*

*Governor General of India*

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***U. N. RESOLUTION OF AUGUST 13, 1948***

This is the most significant resolution passed by the UN on the State of Jammu and Kashmir. It clearly states that Pakistan was to vacate its troop from the whole of the state. It also mentions, albeit indirectly, that Pakistan had consistently lied on the question of whether or not its troops were involved in the fighting in the Jammu and Kashmir. Once then Pakistan Prime Minister conceded that Pakistani Troops were indeed involved, the UN had no option but to ask for their withdrawal. That the withdrawal never took place, is another story.

**The United Nations Commission for India and Pakistan**

Having given careful consideration to the points of views expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir; and

Being of the opinion that the prompt cessation of hostilities and the correction of condition the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in effecting a final settlement of the situation;

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal;

**PART I, Cease-Fire Order**

**A.** The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control and in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

**B.** The high commands of the Indian and Pakistani forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and

Kashmir. For the purpose of these proposals forces under their control shall be considered to include all forces, organised and unorganised, fighting or participating in hostilities on their respective sides.

C. The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

D. In its direction and as the Commission may find practicable, the commission will appoint military observers who, under the authority of the Commission and with the co-operation of both Commands, will supervise the observance of the cease-fire order.

E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

## **PART II: Truce Agreement**

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both the Governments accept the following principles as a basis for the formulation of a truce agreement the details of which shall be worked out in discussion between their representatives and the Commission.

A. 1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that state,

2. The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting,

3. Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission.

**B 1.** When the commission shall have notified the Government of India that the Tribesman and Pakistani Nationals referred to in part-II, A, 2, hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the state of Jammu and Kashmir, and further, that the Pakistani forces are being withdrawn from the state Jammu & Kashmir, the Government of India agrees to withdraw the bulk of its forces from that state in stages to be agreed upon with the Commission.

2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire the minimum strength of its forces which in agreement with the commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded and that all human political rights will be granted.

4. Upon signature, the full text of the truce agreement or a communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

### **Part - III**

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

## APPENDIX-V

**RESOLUTION ON ASSURANCES ADOPTED BY U.N. COMMISSION FOR INDIA AND PAKISTAN (UNCIP) 1948**

*This resolution was in the form of an assurance provided to India before the main UN. Resolution of August 13, 1948, was to be implemented. The Resolution on Assurance said :-*

1. Responsibility for the security of J&K rests with Government of India.
2. The Sovereignty of the J&K Government over the entire territory of the State shall not be brought under question.
3. There shall be no recognition of the so-called Azad (Free) Kashmir Government.
4. The territory Occupied by Pakistan shall not be consolidated to the disadvantage of the State of J&K.
5. The administration of the evacuated areas in the North shall revert to the Government of J&K and its defence to the Government of India who will, if necessary, maintain garrison for preventing the incursion of tribesmen and for guarding main trade routes.
6. Pakistan shall be excluded from all affairs of J&K in particular in the plebiscite, if one should be held.
7. If a plebiscite is found to be impossible for technical or practical reasons, the Commission will consider other methods of determining fair and equitable conditions for ensuring a free expression of people's will.
8. Plebescite proposal shall not be binding upon India if Pakistan does not implement Part I and II of the resolution of 13th August 1948. (The Resolution had called upon Pakistan to withdraw troops from occupied Kashmir.)

***Note : The UNCIP could not make Pakistan accept, these assurances with the result that the very basis of U.N. Resolution of 13th August, 1948 collapsed.***

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**DELHI AGREEMENT**

*After the Constituent Assembly of the State had taken important decisions, it was deemed necessary to receive the concurrence of the Indian Government. Accordingly, the representatives of Kashmir Government conferred with the representatives of Indian Government and arrived at an Agreement. This arrangement was later on known as the "Delhi Agreement, 1952". The main features of this Agreement were :*

In view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all States other than Jammu and Kashmir, in the case of the latter they vested in the State itself; it was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'state subjects' in view of the 'State Subject Notifications of 1927 and 1932'; the State legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;

As the President of India commands the same respect in the State as he does in other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences etc.; would also vest in the President of India';

The Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have

the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;

There was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-i-Riyasat will in the first place be elected by the State; legislature itself instead of being a nominee of the Government and the President of India. With regard to the powers and functions of the Sadar-i- Riyasat the following argument was mutually agreed upon:

- (a) The Head of the state shall be a person recognised the President of the union on the recommendations of the Legislature of the State;
- (b) he shall hold office during the pleasure of the President;
- (c) he may, by writting under his hand addressed to the President, resign his office;
- (d) Subject to the forgoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;
- (e) provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

With regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian

Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on Fundamental rights should form a part of State Constitution of Constitution of the India as applicable to the State;

With regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the board of Judicial Advisers in the state, which was the highest Judicial authority in the State, the Supreme Court should have only appellate jurisdiction;

There was a great deal of discussion with regard to "Emergency powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the States delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.

In order to the viewpoint of the State's delegation, the Government of India agreed to the modification of Article 352 in its application to Kashmir by the addition of the following words:"

*" but in regard to internal disturbance at the request or with the concurrence of the Government of the State"*

At the end of clause (1)

Both the parties agreed that the application of Article 356, dealing with suspensions of the State Constitution and 360, dealing with financial emergency, was not necessary.

The facts analysed above make it clear that the State of Jammu and Kashmir enjoys a special position in the Union of India, and this position of the State has been permitted by Article 2 of the Constitution itself." In arriving at this arrangement", declared Sheikh Mohammad Abdullah, the then Prime Minister of Jammu and

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Kashmir," the main consideration before our Government was to secure a position for the state which would be consistent with the requirements of maximum autonomy for the local organs of the State power which are the ultimate source of authority in the State while discharging obligations as a Unit of the federation"

The Jammu and Kashmir Consitituent Assembly discussed this arrangement and finally adopted a motion of approach on August. 21, 1952.

The agreement was discussed in the Union Parliament on August 7, 1952. and accepted

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## APPENDIX -VII

### ARTICLE 370 OF THE CONSTITUTION OF INDIA

#### *Temporary Provisions with Respect of the State of Jammu and Kashmir*

1. Notwithstanding anything in this Constitution,-

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and. Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to-

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

*Explanation, --* For the purposes of this Article, the



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Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this Article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State Subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

2. If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purposes of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take there on.

3. Notwithstanding anything in the foregoing provisions of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

4. In exercise of the powers conferred by this article the President, on the recommendation of the Constituent Assembly of the State of

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Jammu and Kashmir, declared that, as from the 17th day of November, 1952, the said Article 370 shall be operative with the modification that for the Explanation in clause (1) thereof, the following Explanation is substituted namely:-

*“Explanation—* For the purposes of this article, the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the “Sadar-i-Rayasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office.” \*Now “Governor” (Ministry of Law Order No. C.O. 44, dated the 15th November, 1952)

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## APPENDIX -VIII

### TASHKENT DECLARATION JANUARY 10, 1966

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Pakistan.

(i) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighbourly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region and particularly in the Indo- Pakistan subcontinent and indeed, the interests of the peoples of India and Pakistan were not

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served by the continuance of tension between the two countries. It was against this background that Jammu and Kashmir was discussed and each of the sides set forth its respective position.

### **Troops Withdrawal**

(ii) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn later than 25 February 1966 to the positions they held prior to 5 August 1965, and both sides shall observe the ceasefire terms on the cease-fire line.

(iii) The Prime Minister of India and the President of Pakistan have agreed that relations between India, and Pakistan shall be based on the principle of non interference in the internal affairs of each other.

(iv) The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country and will encourage propaganda which promotes the development of friendly relations between the two countries.

(v) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan to India will return to their posts and that the normal functioning of diplomatic missions of both countries will be restored. Both Governments shall observe the Vienna Convention of 1961 on Diplomatic Intercourse.

### **Trade Relations**

(vi) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications as well as cultural exchanges between India and Pakistan, and to take measures to implement the existing agreement between India and Pakistan.

(vii) The Prime Minister of India and the President of Pakistan have agreed that they will give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

(viii) The Prime Minister of India and the President of Pakistan

have agreed that the two sides will continue the discussions of questions 'relating' to the problems of refugees and eviction of illegal immigration. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agree to discuss the return of the property and assets taken over by either side in connection with the conflict.

### **Soviet Leaders Thanked**

(ix) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue meetings both at highest and at other levels of matters of direct concern to both countries. Both sides have recognised the need to set up joint Indian-Pakistani bodies which will reported to their Governments in order to decide what further steps should be taken.

(x) The Prime Minister of India and the President of Pakistan record their feelings, deep appreciation and gratitude to the leaders of the Soviet Union, the Soviet Union Government and personally to the chairman of the Council of Ministers of the USSR for their constructive, friendly and noble part in bringing about the present meeting which has resulted in mutually satisfactory results. They also express to the Government and friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and generous hospitality.

They invite the Chairman of the Council of Ministers of the USSR to witness the declaration.

Prime Minister of India

President of Pakistan

**Lal Bahadur Shastri**

**Mohammed Ayub Khan**

Tashkent, January 10, 1966,

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APPENDIX-IX

**SIMLA, AGREEMENT, 2 JULY, 1972**

This agreement on Bilateral Relations between India and Pakistan was signed after the 1971 India-Pakistan War, in which Pakistan was defeated conclusively and which resulted in the creation of Bangladesh. India refrained from attacking or finishing off Pakistan and signed this agreement with the hope that henceforth the countries in the region would be able to live in peace with each other. The then Pakistani Prime Minister, Zulfikar Ali Bhutto, also promised the then Indian Prime Minister, Mrs. Indira Gandhi, that his country would accept the Line of Control (LOC) in the State of J&K as the de facto border and would not try to de-stabilise it. This was not formally entered in the agreement because Bhutto said it would cause domestic problems for him at this juncture. Mrs. Gandhi magnanimously accepted his promise and did not formalise that part of the agreement. But Pakistan, as later events were to prove, never kept its part of the deal.

The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the sub-continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

I- In order to achieve this objective, the Government of India and the Government of Pakistan have agreed as follows.

- (i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the countries.
- (ii) That the two countries are resolved to settle their difference by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither

side shall unilaterally after the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.

(iii) That the pre-requisite for reconciliation, good-neighbourliness and durable peace between them is a commitment by both countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;

(iv) That the basic issues and causes of conflict which have bedevilled the relations between the two countries of the last twenty-five years shall be resolved by peaceful means;

(v) That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;

(vi) That in accordance with the Charter of the United Nations, they shall refrain from the threat or use of force against the territorial integrity or political independence of each other;

**II-** Both Governments will take all steps within their power to prevent hostile propaganda directed against each other.

Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them;

**III-** In order progressively to restore and normalise relations between the two countries step by step, it was agreed that;

(i) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including overflights;

(ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country ;

(iii) Trade and co-operation in economic and other agreed fields will be resumed as far as possible;

(iv) Exchange in fields of science and culture will be promoted.

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In this connection delegations from the two countries will meet from time to time to work out the necessary details.

**IV-** In order to initiate the process of the establishment of durable peace, both Governments agree that :

(i) Indian and Pakistani forces shall be withdrawn to their side of the international border;

(ii) In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17 , 1971 shall be respected by both sides without prejudice to the recognised position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat of the use of force in violation of this line;

(iii) The withdrawals shall commence upon entry into force of this Agreement and shall be completed within a period of thirty days thereof.

**V-** This agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the Instruments of Ratification are exchanged.

**VI-** Both Governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization of relations, including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu & Kashmir and the resumption of diplomatic relations.

Sd/-

**Indira Gandhi**

Prime Minister

Republic of India

Sd/-

**Zulfiqar Ali Bhutto**

President

Islamic Republic of Pakistan

## APPENDIX -X

## THE KASHMIR ACCORD

November 13,1974

Agreed conclusions which led to Sheikh Mohammad Abdullah's accord with Mrs. Indira Gandhi, Prime Minister, and his subsequent assumption of office as Chief Minister in February 1975:

1. The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India.
2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.
3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an order of the President under Article 370, each individual proposal in this behalf being considered on its merits; but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.
4. With a view, to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures cultural matters, social security, personal procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, needs



## ARTICLE 370 - A THORN

amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to laws to be made by Parliament in future under the proviso to clause 2 of the Article. The State Government shall be consulted regarding the application of any such law to the state and the views of the State Government shall receive the fullest consideration.

5. As an arrangement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by Presidential order to the effect that no law made by the Legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of Constitution of the State of Jammu and Kashmir relating to the under mentioned matters, shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent ;the matters are:

(a) the appointment, powers, functions, duties, privileges and immunities of the Governor, and

(b) the following matters relating to Elections namely, the superintendence, direction and control of elections by the Election Commission of India , eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the Legislative Council, being matters specified in sections 138,139,140 and 50 of the Constitution of the State of Jammu and Kashmir.

6. No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and the matter is therefore, remitted to the Principals.

**Mirza Mohammad Afzal Beg**

**G. Parthasarathi**

New Delhi, November 13, 1974

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## PROCLAMATION OF MAHARAJA HARI SINGH

July 9, 1931

## TO MY BELOVED PEOPLE

From time immemorial all communities within the State have been living on terms of closest harmony and friendship with each other and I used to take the greatest pride in the fact that we were happily free from all communal strife. I am, therefore, greatly pained to see that quite recently owing to external influences a changed and regrettable attitude is observable in certain sections in the cities of Jammu and Srinagar. This is greatly to be deplored. Two unfortunate incidents which occurred recently in Jammu city and which could not by any stretch of imagination be associated with any action or policy of my Government and for which the responsibility rested solely on the persons involved have been seized upon and widely misrepresented and outside the State so as to convey to those who are not in a position to know the true facts that the policy of my Government is such that Islam is in danger. It is not my intention to deal with the details of these incidents in this message as they are being dealt with separately. So far I have preferred that my Government be judged by its actions alone. But numerous representations from my loyal subjects of all sects and creeds have reached me within the last few days to the effect that such agitation: even though at present it elicits no response generally is calculated to promote communal strife and might even lead to breaches of the public peace in some cases. It has accordingly been deemed necessary to make this formal announcement of the policy and intention of myself and my Government in regards to such propaganda and communal relations within the State generally.

At the beginning of my rule I announced to you, my people, that my religion is justice. That announcement has guided all my public acts and policies and I shall always adhere to it. I have not made, and will not permit, any discrimination against any class of

## ARTICLE 370 - A THORN

my people on the grounds of religion. The humblest of my subjects has free and direct access to me and any grievances my people may have can be submitted by them personally to me, subject to lorn fundamental conditions, viz.,

1. that political activities are confined within the law of the land, and
2. that no outside intervention is sought in any shape or form.

I have no desire whatever to suppress the legitimate requests and voice of my people whether expressed in writing or in speech. It is my intention to give effect to these views but I am unable to do so, so long as communal tension exists, for fear of aggravating it. Consequently, the first essential is that the leaders of the various communities should take immediate action to put a stop to all political activities tending to prevent the re-establishment of friendly relations between them. As Soon as it is reported to me that any community has faithfully responded to my desire, I shall be prepared to receive and consider most sympathetically any re-presentation that community may desire to submit to me.

Every person within the State is, and shall always be, free to practice his own religion, subject to the paramount necessity of maintaining public peace and public order.

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## APPENDIX - XII

### JINNAH'S ADDRESS TO MUSLIMS OF JAMMU AND KASHMIR

As I said at the moment I reached Jammu, it is not the policy of the Muslim League to interfere with the internal, administration of this State or the grave and serious issues that face the Maharaja and his Government, as between him and his people, but we are

certainly very deeply concerned with the welfare of the Mussalmans in the State, and I must say that even a casual visitor cannot but be shocked to see the condition of the people in this State, even in matters of their elementary needs and necessities. Sir B.N. Rao has just taken charge as the Prime Minister of the State, and now the people are looking up to him and expecting that he will take effective measures for their betterment.

As regards the Mussalmans, as I said, we are vitally concerned with their welfare, but I regret that although Sheikh Abdullah and his party and the Muslim Conference discuss matters with me in Delhi and in Lahore before my arrival here and were good enough to accord me a great reception and were anxious that I should hear both sides and bring about a settlement, when I, after careful consideration, suggested that the Mussalmans should organize themselves under one flag and on one platform, not only my advice was not acceptable to Sheikh Abdullah but, as is his habit, which has become a second nature with him, he indulged in sorts of language of a most offensive and vituperative character in attacking me. My advice to the Mussalmans is that differences can only be resolved by argument, discussion, exchange of views, and reason and not by goondaism and one thing that I must draw the attention of Kashmir Government about is that goondaism must be put down at any cost, and there should be constitutional liberty of speech and freedom of thought, which is the elementary right of every citizen under any civilized form of Government.

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## MAHARAJA HARI SINGH'S LETTER TO MOUNTBATTEN

**Text of Letter Dated October 26, 1947 from Hari Singh,  
The Maharaja of Jammu & Kashmir to Lord Mountbatten,  
Governor General of India.**

Dated: 26 October 1947

My dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundary with the Soviet Republic and China. In their external relations the Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government are operating Post and Telegraph system inside the State.

Though we have got a Standstill Agreement with the Pakistan Government that Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infiltrate into the State at first in Poonch and then in Sialkot and finally in mass area adjoining Hazara District on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mahora powerhouse which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer Capital of my Government, as first step to over-running the whole State.

The mass infiltration of tribesmen drawn from distant areas of the North-West Frontier coming regularly in motor trucks using Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possibly be done without the knowledge of the Provisional Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Government no attempt has been made to check these raiders or stop them from coming into my State. The Pakistan Radio even put out a story that a Provisional Government had been set up in Kashmir. The people of my State both the Muslims and non-Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to free-booters. On this basis in civilized Government can exist or be maintained. This alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

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I am also to inform your Excellency's Government that it is my intention at once to set up an interim Government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you, if further explanation is needed.

In haste and with kind regards,

The Palace, Jammu

26th October, 1947

Yours Sincerely

**Hari Singh**

## APPENDIX- XIV

### **EXCERPTS OF THE SPEECH BY SHEIKH MOHAMMAD ABDULLAH IN THE UN SECURITY COUNCIL MEETING NO. 241, HELD ON 5<sup>TH</sup> FEBRUARY 1948**

I have heard with patience, attention and respect the statements made by the representatives of Pakistan and members of the Security Council, as well as the statements made on various occasions by the members of my own delegation. I have heard patiently to the debate in the Security Council, but I feel that I am rather confused. After all, what is the point in dispute? The point in dispute is not that the sovereignty of the Prince is in question, as the representative of Pakistan stated yesterday.....

The subject of the dispute before the Security Council is not the maladministration of the Princely State of Kashmir....the dispute revolves around the fact that Kashmir acceded legally and constitutionally to the Dominion of India... the tribes men across the border have poured into my country. They have been helped and are being helped by the Pakistan Government, with the result that there is the possibility of a greater conflagration between India

## ARTICLE 370 - A THORN

and Pakistan. But (the representative of Pakistan) completely denied that any support was being given by the Government of Pakistan to either tribesman of those who are in revolt within the state against the constituted authority....

But then this simple issue has been confused... Today Pakistan has become the champion of our liberty. I know very well that in 1946, when I raised the cry of "Quit Kashmir," the leader of the Pakistan Government, who is the Governor-General now, Mr. Mohammad Ali Jinnah, opposed my Government, declaring that this movement was a movement of a few renegades and that Muslims as such had nothing to do with the movement.

The Muslim Conference, which has been talked about so much, opposed my movement and declared its loyalty to the Prince. The representative of Pakistan now says that Shaikh Abdullah, once the supporter of "Quit Kashmir," has joined hands with the Maharaja of Kashmir.....side.....But the State of Jammu and Kashmir, and its people, kept calm....

Why was that so? It was because I and my organization never believed in the formula that Muslims and Hindus form separate nations, We do not believe in the two-nation theory, nor in communal hatred or communalism itself. We believed that religion had no place in politics. Therefore, when we launched our movement of "Quit Kashmir" it was not only Muslims who suffered, but our Hindu and Sikh comrades as well....

The situation was worsening day by day and the minority in our State was feeling very nervous. As a result tremendous pressure was brought to bear upon the state administration to release me and my colleagues. The situation outside demanded the release of workers of National Conference, along with its leader, and we were accordingly set free.

Immediately we were liberated from the prison we were faced with the important questions of whether Kashmir should accede to Pakistan, accede to India, or remain independent ... We could not decide this all important issue before achieving our own



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liberation, and our slogan became "Freedom before accession." Some friends from Pakistan met me in Srinagar. I have a heart-to-heart discussion with them and explained my point of view....

While I was engaged in these conversations and negotiations with friends from Pakistan, I sent one of my colleagues to Lahore, where he met the Prime Minister of Pakistan, Mr Liaquat Ali Khan, and other high dignitaries of the west Punjab Government. He placed the same point of view before them and requested that they should allow us time to consider this vital question, first helping us to achieve our liberation instead of forcing us to declare our decision one way or the other. Then, one fine morning while these negotiations were proceeding, I received news that a full fledged attack had been carried out by the raiders on Muzaffarabad, frontier town in the Kashmir Province....

While the raiders came to our land, massacred thousands of people - mostly Hindus and Sikhs, but Muslims too.. abducted thousands of girls, Hindu, Sikhs and Muslims alike looted our property and almost reached the gates of our summer capital, Srinagar, the result was that the civil, military and police administration failed. The Maharaja, in the dead of the night, left the capital along with his courtiers, and the result was absolute panic. There was no one to take over control. In that hour of crisis, the National Conference came forward with 10,000 volunteers and took over the administration of the country. They started guarding the banks, the offices and houses of every person in the capital. This is the manner in which the administration changed hands. We were de facto in charge of the administration. The Maharaja, later on, gave it a legal form....

I was explaining how the dispute arose - how Pakistan wanted to force this position of slavery upon us. Pakistan had no interest in our liberation or it would not have opposed our freedom movement. Pakistan would have supported US when thousands of my countrymen were behind bars and hundreds were shot to death. The Pakistani leaders and Pakistani papers were heaping abuse upon the people of Kashmir who were suffering these tortures.

Then, suddenly, Pakistan comes before the bar of the world as the champion of liberty of the people of Jammu and Kashmir....

I had thought all along that the world had got rid of .Hitlers and Goebbels, but, from what has happened and what is happening in my poor country, I am convinced that :they have only transmigrated their souls into Pakistan...

If Pakistan comes forward and says, "We question the legality of the accession," I am prepared to discuss whether or not the accession of Jammu and Kashmir to India was legal. However, now they say, "We want a plebiscite; we want to obtain the free and unfettered opinion of the people of Kashmir. There should be no pressure exerted on the people and they should make the free choice as to the State to which they wish to accede."

Not only is, this the offer that was made by the people of Kashmir to Pakistan long, long ago, but it is the offer made by Prime Minister of India at a time when, I think, he had not the slightest need for making it, as Kashmir was in distress.

We realized that Pakistan would not allow us any time, that we had either to suffer the fate of our kith and kin of Muzaffarabad, Baramula, Srinagar and other towns and villages, or to seek help from some outside authority.

Under those circumstances, both the Maharaja and the people of Kashmir requested the Government of India to accept our accession. The Government of India could easily have accepted the accession and could have said, "All right, we accept your accession and we shall render this help." There was no necessity for the Prime Minister of India to add the proviso, when accepting the accession, that "India does not want to take advantage of the difficult situation in Kashmir. We will accept this accession because, without Kashmir's acceding to the Indian dominion, we are not in a position to render any military help. But once the country is free from the raiders, marauders and looters, this accession will be subject to ratification by the people." That was the offer made by the Prime Minister of India.

That was the same offer which was made by the people of Kashmir to the Government of Pakistan, but it was refused because at that time Pakistan felt that it could, within a week, conquer the entire Jammu and Kashmir State and then place fait accompli before the world, just as happened some time ago in Europe....

After all, we have been discussing the situation in Kashmir. I should say we have been playing the drama of Hamlet without the Prince of Denmark...

The Security Council should not confuse the issue. The question is not that we want internal freedom,. the question is not how the Maharaja got his State, or whether or not he is sovereign. These points are not before the Security Council. Whether Kashmir has lawfully acceded to India -complaints on that score have been brought before the Security Council on behalf of Pakistan -is not the point at issue. If that were the point at issue then we should discuss that subject. we should prove before the Security Council that Kashmir and the people of Kashmir have lawfully and constitutionally acceded to the Dominionm of India, and pakistan has no right to question that accession.However, that is not the discussion before the Security Council.....

The Security Council must send a commission to the spot to see whether the complaint brought before the Security Council is valid or invalid... Therefore, somebody must go to the spot . Then at that time it would be for us to prove that the charges we have brought before the Security Council are correct to the last word. That is only help, we want,and no other help.

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## PARLIAMENT RESOLUTION

“This House”

note with deep concern Pakistan's role in imparting training to the terrorists in camps located in Pakistan and Pakistan Occupied Kashmir, the supply of weapons and funds, assistance in infiltration of trained militants, including foreign mercenaries into Jammu and Kashmir with the avowed purpose of creating disorder, disharmony and subversion; reiterates that the militants trained in Pakistan are indulging in murder, loot and other heinous crimes against the people, taking them hostage and creating an atmosphere of terror;

Condemns strongly the continued support and encouragement Pakistan is extending to subversive and terrorist activities in the Indian State of Jammu & Kashmir;

Calls upon Pakistan to stop forthwith its support to terrorism, which is in violation of the Simla Agreement and the internationally accepted norms of inter-State conduct and is the root cause of tension between the two countries;

reiterates that the Indian political and democratic structures and the Constitution provide for firm guarantees for the promotion and protection of human rights of all its citizens;

regard Pakistan's anti-India campaign of calumny and falsehood as unacceptable and deplorable, notes with deep concern the highly provocative statements emanating from Pakistan, urges Pakistan to refrain from making statements which vitiate the atmosphere and incite public opinion;

expresses regret and concern at the pitiable conditions and violations of human rights and denial of democratic freedoms of the people in those areas of the Indian State of Jammu and Kashmir, which are under the illegal occupation of Pakistan;

**On Behalf of the People of India,**

Firmly declares that:



## **ARTICLE 370 - A THORN**

(a) The State of Jammu & Kashmir has been, is and shall be an integral part of India and any attempts to separate it from the rest of the country will be resisted by all necessary means;

(b) India has the will and capacity to firmly counter all designs against its unity, sovereignty and territorial integrity;

and demands that:-

(c) Pakistan must vacate the areas of the Indian State of Jammu and Kashmir, which they have occupied through aggression; and resolves that-

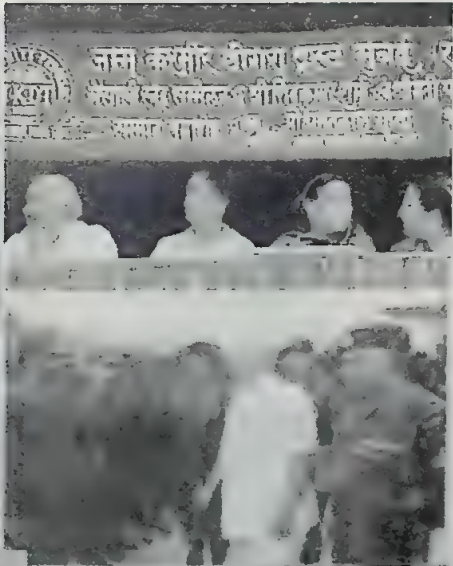
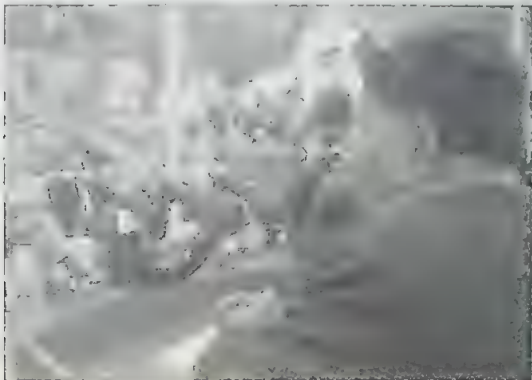
(d) all attempts to interfere in the internal affairs of India will be met resolutely.”

The Resolution was unanimously adopted.

Mr. Speaker: The Resolution is unanimously passed.

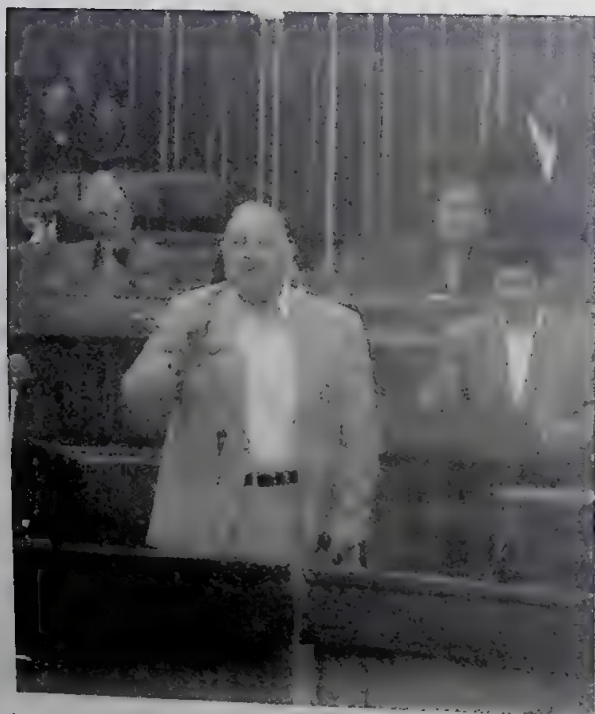
**February 22, 1994**

*The Author in various roles of National Building*

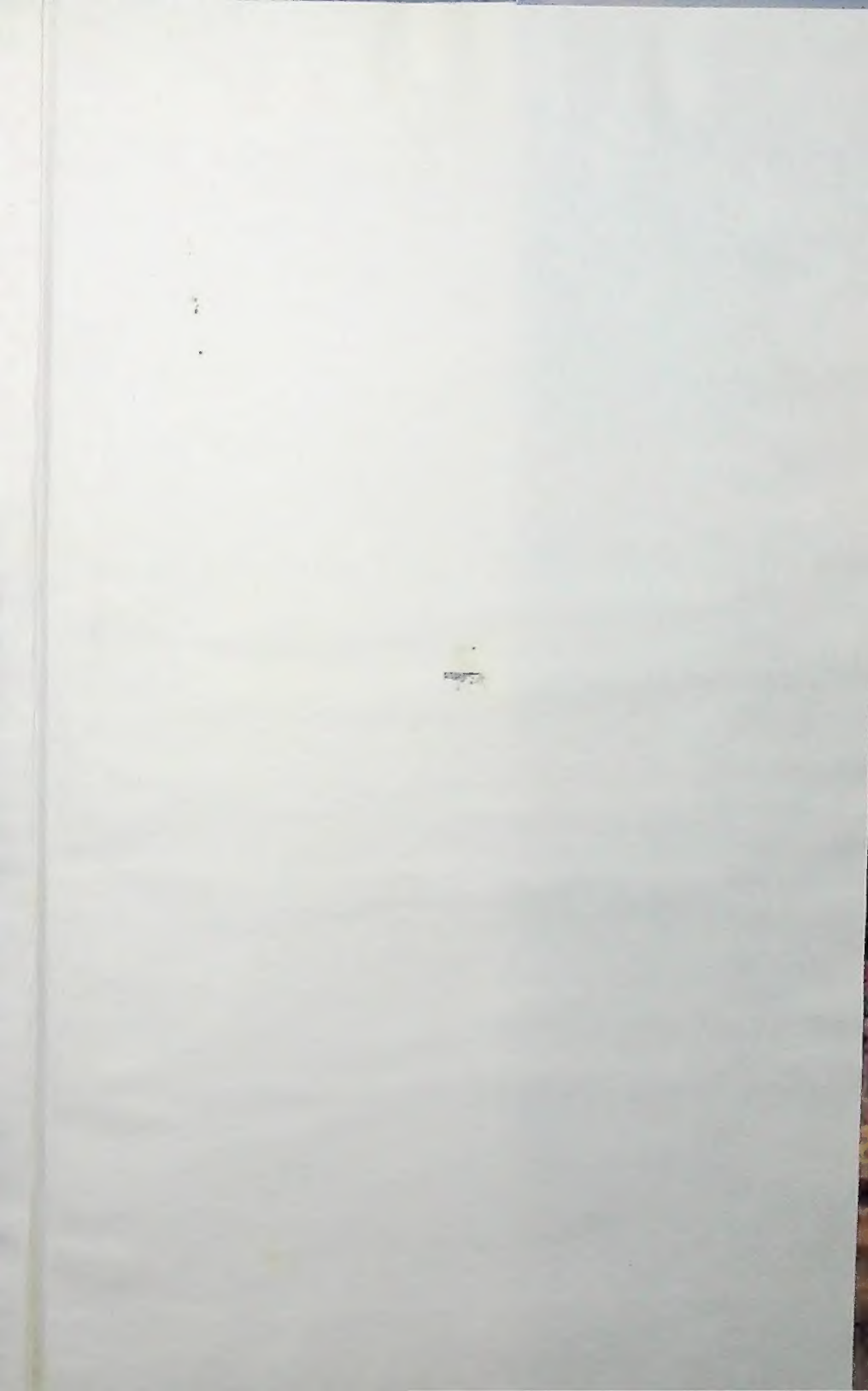




*The Author (Second from right in 1st row) at Red Fort during Independence Day Celebrations welcoming the then P.M. of NDA Govt. Sh. Atal Bihari Vajpayee*



*The Author taking part in a discussion in J&K Assembly*









## **Publication of the Author**

1. Sansad Mein  
Jammu Kashmir -  
1997.
2. Lok Sabha Mein  
Daed Varsh - 1997
3. Mere Preyas - 1999
4. Tera Tujko Arpan -  
2004.
5. Scores of articles in  
leading dailies.



## ABOUT THE AUTHOR



Prof. Chaman Lal Gupta former Minister of State for Defence was elected to the Parliament from Udhampur Constituency in J&K for the three consecutive terms. During NDA Government he was also Minister of State for Civil Aviation & Food Processing Minister (Independent Charge). After getting with a thumping majority from prestigious Jammu West Constituency, at present he is leader of Legislative Party of BJP in J&K Assembly. A closed associate of Pt. Prem Nath Dogra, Prof. Gupta has been connected in all political development in Jammu & Kashmir and has taken part in almost all the agitations for intergration of the State with rest of the country. He also received Dr. Syama Prasad Mookerjee when he visited the State without permit.

Born on 13<sup>th</sup> April 1934 in a village, named Kaleeth near Jammu in a well to do family he had his formal education in Jammu & Allahabad. Having completed his Post Graduation in Physics from the University of Allahabad in 1958, he spent four years in Gujrat as Pracharak of Rashtriya Swayamsevak Sangh. In 1962, he was appointed Lecturer in Gāndhi Memorial College, Jammu. Due to his political inclination and commitments, he was transferred frequently—first to Sopor College in 1969 and then to Degree College, Udhampur in 1971 where he resigned from the post of Professor to join active politics in 1972. He was elected the same year to the Legislative Assembly, J&K. Between 1973 to 1980, he remained General Secretary of Bhartiya Jan Sangh in J&K. He was also State General Secretary of BJP during 1980 to 1989. In 1987, he was elected to the Legislative Assembly for the second time. Prof. Gupta also remained State President of BJP for two terms between 1990-95. In 1975, during the days of Emergency, he remained underground and was imprisoned along with other leaders of Jan Sangh.

Prof. Gupta all along has played a significant role in the rehabilitation of refugees. In Kashmir as a consequence of terrorist activities thousands of families migrated from Kashmir Valley. Similarly in the terrorists hit Doda District Prof. Gupta took an active role in providing relief to the militancy hit victims. Prof. Gupta, at this juncture, launched "Doda Bachao Andolan" to check and counter the evil designs of terrorists in the region. Over 50000 Satyagrahis and several National leaders actively participated in this "Andolan", after which Distt. Doda was handed over to Army and about two thousand Village Defence Committees were framed to fight the terrorists.

Prof. Gupta is a widely travelled person. He is interested in reading and writing. Married to Smt. Rekha Gupta on 6<sup>th</sup> May 1961, Prof. Gupta has two sons-Anil and Vikas and a daughter-Meenakshi.

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